

## J. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationships between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the 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 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. The proposed rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 2, 2002.

**L. John Iani,**  
Regional Administrator, Region 10.  
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

[OPPTS-50640; FRL-6745-7]

RIN 2070-AB27

### Proposed Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing this significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the following six chemical substances: C.I. Pigment Orange 20 (CAS No. 12656-57-4); Chromic Acid, Lead(2+) Salt (1:1) (CAS No. 7758-97-6); Chromium Lead Molybdenum Oxide (CAS No. 12709-98-7); Lead Molybdenum Oxide (CAS No. 10190-55-3); Sulfuric Acid, Lead(2+) Salt (1:1) (CAS No. 7446-14-2); and C.I. Pigment Red 104 (CAS No. 12656-85-8). This action proposes to require persons who intend to manufacture, import, or process any of these chemical substances for use in aerosol spray paint for non-industrial, indoor spray application to notify EPA at least 90 days before commencing such activities. The required notification would provide EPA with the opportunity to evaluate the intended use, and if necessary, prohibit or limit that activity before it occurs.

**DATES:** Comments, identified by the docket control number OPPTS-50640, must be received by EPA on or before March 18, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS-50640 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Joe B. Boyd, Chemical Control Division, (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260-3563 or (540) 778-4609; e-mail address: boyd.joe@epa.gov.  
**SUPPLEMENTARY INFORMATION:**

### I. General Information

#### A. Does this Action Apply to Me?

You may be potentially affected by this action, if finalized, if you manufacture, import, or process the chemical substances addressed in this proposed rule. In addition, these are

reporting requirements for exporters of these substances. Potentially affected categories and entities may include, but are not limited to:

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THE SNUR REQUIREMENTS

Categories	NAICS codes	Examples of potentially affected entities
Chemical manufacturers, importers, or processors	325	Persons who manufacture, defined by statute to include import or process, one or more of the subject chemical substances
Chemical exporters	325	Persons who export, or intend to export, one or more of the subject chemical substances

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 Table 1 of 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 or not this action applies to certain entities. To determine whether you or your business could be affected by this action, you should carefully examine the proposed rule and the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access these documents, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 721 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr721\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr721_00.html), a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-50640. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are

physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260-7099.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS-50640 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260-7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: [oppt.ncic@epa.gov](mailto:oppt.ncic@epa.gov), or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control

number OPPTS-50640. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

### A. What Action is the Agency Taking?

This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacturing, importing, or processing of any amount of one or more of the six chemical substances listed in Table 2 of Unit III. for use in aerosol spray paint for non-industrial, indoor spray application.

### 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 notification to EPA at least 90 days before they manufacture, import, or process the substance for that use.

### C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, reporting and

recordkeeping requirements, and exemptions. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to a SNUR must comply with the same notification 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 the Agency receives notification under a SNUR, EPA may, if warranted, take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notification. 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 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) (15 U.S.C. 2611 (b)). The regulations that implement TSCA section 12(b) appear at 40 CFR part 707, subpart D. Additionally, persons who intend to import any chemical substance are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the United States Customs Service regulations codified at 19 CFR 12.118 through 12.127 and 127.28. Importers would need to certify that their import shipments are in compliance with the final SNUR requirements among any other TSCA requirements. The EPA policy in support of import certification appears at 40 CFR 707.20.

## III. Summary of this Proposed Rule

The chemical substances which are the subjects of this proposed SNUR are listed in Table 2 of this unit. EPA is proposing to designate as a significant new use the use of any of these six chemical substances in aerosol spray paints for non-industrial, indoor spray application. EPA is proposing that "aerosol spray paint" be defined as "a liquid mixture, usually of a solid pigment in a liquid medium, sold in pressurized containers and applied to a surface to form a decorative or protective coating. Aerosol spray paints are sold in individual containers the contents of which are applied without the aid of an air compressor or other external aspirating device." EPA is also proposing a definition for "indoor spray application" as "any application of a liquid from a pressurized container within a confined space, including but not limited to inside a building, tank, vessel, motor vehicle, or other structure. Indoor application to objects intended for outdoor use, e.g., painting lawn furniture in a basement for outdoor use, is included within the meaning of indoor spray application." "Non-industrial use" is already defined in the regulations governing SNURs at 40 CFR 721.3 as a "use other than at a facility (also defined in § 721.3) where chemical substances or mixtures are manufactured, imported or processed," and EPA is not proposing to change the definition for this action. This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of any of these chemical substances for use in aerosol spray paints intended for non-industrial, indoor spray application.

TABLE 2.—CHEMICAL SUBSTANCES CONTAINING LEAD, CHROMIUM, AND/OR CADMIUM WHICH ARE COVERED BY THIS PROPOSED RULE

Chemical substance	CAS No.
C.I. Pigment Orange 20 (*)	12656-57-4
Chromic Acid, Lead(2+) Salt (1:1) (**) (***)	7758-97-6
Chromium Lead Molybdenum Oxide (**) (***)	12709-98-7
C.I. Pigment Red 104 (**) (***)	12656-85-8
Lead Molybdenum Oxide (***)	10190-55-3
Sulfuric Acid, Lead(2+) Salt (1:1) (***)	7446-14-2

(\*) Contains cadmium  
 (\*\*) Contains chromium  
 (\*\*\*) Contains lead

## IV. Objectives and Rationale for this Proposed SNUR

EPA is concerned about the potential risks related to the toxicity and potential exposures which could result from non-industrial, indoor spray application of

aerosol spray paints containing one of more of the chemical substances listed in Table 2 of this unit. The Agency is proposing definitions for indoor spray application and aerosol spray paint. The terms of these definitions convey the

technical framework for what is included in the significant new use. In addition, EPA believes that use of the subject substances for the proposed significant new use has a high potential to increase both the magnitude and

duration of exposure to these substances beyond existing levels.

At this time, the six chemical substances covered by this proposed rule are the only specific compounds containing lead, chromium, and/or cadmium that are known to have been formulated in aerosol spray paints with the potential for non-industrial, indoor spray application. If EPA identifies other chemical substances of concern with similar potential uses, it may propose SNURs to cover such additional chemical substances.

EPA believes that there is no ongoing manufacture, import, or processing of these chemical substances for use in aerosol spray paints except for those intended for industrial and/or outdoor uses. If EPA receives information through comments on this proposed rule or otherwise that indicates that indoor non-industrial uses are ongoing, EPA would consider modifying the proposed significant new use accordingly, to exclude particular ongoing uses, in developing a final rule. The Agency would assess whether separate regulatory or voluntary action may be appropriate for any such ongoing uses.

In determining what would constitute a significant new use for the six chemical substances that are subjects of this proposed SNUR, EPA considered relevant information on the toxicity of the chemical substances, likely exposures associated with potential uses, information provided by industry sources (Ref. 5), and the four factors listed in TSCA section 5(a)(2).

Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this proposed SNUR. EPA wants to ensure that:

1. The Agency would receive notification of any company's intent to manufacture, import, or process the subject chemical substances for use in aerosol spray paints intended for non-industrial, indoor spray application.
2. The Agency would have an opportunity to review and evaluate data submitted in a Significant New Use Notice (SNUN) before the notice submitter begins manufacturing, importing, or processing the subject chemical substances for use in aerosol spray paints for non-industrial, indoor spray application.
3. The Agency would be able to regulate prospective manufacturers, importers, or processors of the subject chemical substances before a significant new use occurs provided that the degree of potential risk, or uncertainty about

the risks, is sufficient to warrant such regulation.

## V. Information on the Subject Lead, Chromium, and/or Cadmium Containing Compounds

### A. Health Effects

EPA reviewed health hazard data associated with a wide range of chemical components of aerosol spray paints including the six chemical substances listed in Table 2 of Unit III. (Ref. 1). When inhaled, the six chemical substances covered under this proposed rule may be absorbed through the lungs or retained in the lungs and cause a variety of chronic toxicities. In particular, hexavalent chromium compounds, including chromate pigments such as those listed in Table 2 of Unit III., are recognized human carcinogens (Refs. 9, 13). In addition, dermal exposure to hexavalent chromium compounds has been associated with irritant and allergic contact dermatitis (Ref. 9). There is adequate evidence that cadmium compounds are carcinogenic in animals and some epidemiologic evidence suggests that they may also be carcinogenic in humans. These data caused EPA to list cadmium compounds as probable human carcinogens following inhalation exposure (Ref. 10), while the International Agency for Research on Cancer listed cadmium compounds as carcinogenic in humans (Ref. 14). Also, long-term human exposure to low levels of cadmium compounds has been associated with a variety of toxic effects such as osteomalacia, osteoporosis, obstructive lung diseases, and kidney dysfunction (Refs. 8, 16). In addition, there is adequate evidence that some lead compounds are carcinogenic in animals but inadequate evidence to assess their carcinogenic potential in humans. EPA has listed lead compounds as probable human carcinogens (Ref. 11) while the International Agency for Research on Cancer has considered lead compounds as possibly carcinogenic in humans (Ref. 12). Finally, exposure of developing fetuses and young children to lead containing substances can result in damage to the brain and central nervous system, slow growth, hyperactivity, and learning problems. Adults exposed to lead may develop symptoms indicative of nervous disorders and anemia as well as memory and concentration problems (Refs. 14, 15).

### B. Exposure Data

Assessments for consumer exposures to components of aerosol spray paints

are described in the "Indoor Air Cluster Report: Consumer Exposure to Components of Aerosol Spray Paint" (Ref. 2). Those analyses include estimates of amounts of nonvolatile pigments in the spray paint and the amounts of aerosolized spray paint not deposited on the target and available for inhalation and inadvertent ingestion. Consumer exposure assessments using a multi chamber exposure assessment model were performed in order to estimate user exposures from indoor spray applications in a residential kitchen, basement and garage. One assessment indicated that the exposure to an adult spraying paint in a kitchen (e.g., spray painting metal cabinets, air plane models, etc.) a couple times a year could be toxicologically significant. This and other exposure scenarios showed that nonvolatile pigments, as components of paint sprayed indoors, were both respirable and ingestible. These routes of exposure were the basis of risk screening concerns (Ref. 3). Based on data from a usage survey and the Census Bureau EPA believes that 68.2 million U.S. consumers have potential annual exposure to components of aerosol spray paints (Ref. 3). Specific exposure to individual consumers who spray paint indoors is dependent on many factors, especially on the amount of air that flows through the building and into and out of the immediate vicinity of application. People who spray paint indoors with windows and doors open and use a fan to direct contaminated air out-of-doors are less likely to have significant exposures than those who spray paint without increasing their work area ventilation.

EPA believes that, generally, indoor spray application of aerosol paints containing lead, chromium or cadmium in industrial settings, where protective measures are required should not result in exposure levels as high as those of consumers or other non-industrial indoor users. Industrial workers who use aerosol spray paints in industrial settings are protected by applicable safeguards and controls under the Occupational Health and Safety Administration's hazard communication standard (29 CFR 1910.1200). For example, carcinogenic chemical substances in the workplace must be addressed in a hazard communication program and listed on the material safety data sheet (MSDS).

Exposures from outdoor spray applications of aerosol spray paint products by consumers, e.g., painting lawn furniture out-of-doors, are usually much lower. This is due to the large volume of air available for dilution out-

of-doors and removal of over spray away from the user's breathing zone by natural air circulation.

#### C. Consumer Product Safety Commission's Related Action on Lead Paint

Effective February 27, 1978, the Consumer Product Safety Commission (CPSC) banned most paint and similar surface coating materials with 0.06% or more of lead content by weight from consumer use (42 FR 44199, September 1, 1977) (codified at 16 CFR part 1303). This action was taken under the hazardous products provisions of sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058). The determination was based on a two-part finding:

1. There was an unreasonable risk of lead poisoning in children associated with lead content of more than 0.06% in paints and coatings to which children have access.

2. No feasible consumer product safety standard under the CPSA would adequately protect the public from this risk, 16 CFR 1303.1(c).

The lead containing chemical substances addressed in this proposed SNUR were once associated with several commercial automotive uses (Table 3 of this Unit). Such uses of lead containing products were excluded from CPSC's ban because the ban was issued under the CPSA, and the CPSA specifically excludes "motor vehicles and motor vehicle equipment" from the scope of the Act (15 U.S.C. 2052(a)(1)(c)).

Certain lead paint products are exempted from the CPSC ban, with the provision that certain cautionary labeling requirements be followed (16 CFR 1303.3(b)) including:

1. Agricultural and industrial equipment refinish coatings.

2. Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

3. Graphic art coatings (i.e., products marketed solely for applications on billboards, road signs, and similar uses and for identification marking in industrial buildings).

4. Touch up coatings for agricultural equipment, lawn and garden equipment, and appliances.

5. Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

In addition, three product categories are exempted from CPSC's ban with no cautionary labeling requirements (16 CFR 1303.3(c)):

1. Mirrors with lead containing backing paint when part of furniture articles.

2. Artist paint and related materials.<sup>1</sup>

3. Metal furniture articles (but not metal children's furniture) bearing factory applied coatings that contain lead.

Altogether in 1978, the CPSC determined that the eight product categories of exemption met public needs, and although some industrial products contained more than 0.06% lead, there were no effective substitutes, and such products were unlikely to be accessed by children. Activities associated with certain of the use categories exempted under the CPSC rule may be covered by this proposed SNUR. For example, touch up by consumers of appliances in the home.

#### D. Applicable OSHA Standards and Recommendations from the ACGIH

Under the OSHA Hazard Communication Standard (29 CFR 1910.1200), employees who engage in industrial, indoor spray application of aerosol spray paints containing lead, cadmium, or chromium must be informed of the hazards of exposure to these compounds. This standard requires a written hazard communication program, appropriate hazard labeling and warnings, employee training, and the availability of material safety data sheets. In addition to the Hazard Communication Standard, OSHA has established Permissible Exposure Limits (PELs) for lead, chromium, and cadmium. These values are listed in 29 CFR 1910.1000 in Tables Z-1 ([http://www.osha-slc.gov/OshStd\\_data/1910\\_1000\\_TABLE\\_Z-1.html](http://www.osha-slc.gov/OshStd_data/1910_1000_TABLE_Z-1.html)) and Z-2 ([http://www.osha-slc.gov/OshStd\\_data/1910\\_1000\\_TABLE\\_Z-2.html](http://www.osha-slc.gov/OshStd_data/1910_1000_TABLE_Z-2.html)). Lead and cadmium are found in Table Z-1 of 29 CFR 1910.1000, which lists applicable PELs in workplace air of 0.05 mg/cubic meter for lead and 0.005 mg/cubic meter for cadmium (each averaged over an 8-hour, time-weighted average (TWA)). Chromium can have a PEL ranging from 0.1 to 0.5 mg/cubic meter (also determined over an 8-hour TWA), depending upon the specific type of chromium compound. The lower value of 0.1 mg/cubic applies to hexavalent

<sup>1</sup> More recently, following enactment of the Labeling of Hazardous Art Materials Act (LHAMA), 15 U.S.C. 1277 (Public Law 100-695, enacted November 18, 1988), the CPSC has issued regulations in the *Federal Register* of October 9 1992 (57 FR 46626) regarding the labeling of craft materials that present a chronic hazard. These products include solvents, spray paints, silk-screen inks, adhesives, and any other substance marketed or represented as suitable for use in the creation of any work of visual or graphic art of any medium. CPSC's regulatory enforcement policy for these regulations was set forth in the *Federal Register* of February 13, 1995 (60 FR 8188).

chromium compounds, while 0.5 mg/cubic meter applies to other chromium compounds. Hexavalent chromium compounds are listed in Table Z-2 of 29 CFR 1910.1000, while other chromium compounds are listed in Table Z-1 of 29 CFR 1910.1000. Lead and cadmium are also covered under substance-specific standards found in 29 CFR part 1910, Subpart Z—Toxic and Hazardous Substances, at 29 CFR 1910.1025 and 29 CFR 1910.1027, respectively, which contain particular guidance and requirements on exposure limits, workplace sampling, and medical monitoring requirements.

Recommended occupational exposure guidelines have also been published for lead, cadmium, and chromium by the American Conference of Governmental Industrial Hygienists (ACGIH) (Ref. 17). These exposure guidelines for airborne contaminants are known as threshold limit values (TLVs). These values are often based on very recent data, and can provide information that is supplementary to that provided by PELs so reliance on TLVs may further limit workplace exposure to certain hazardous substances. The TLVs include 0.01 mg/cubic meter for cadmium metal, 0.002 mg/cubic meter for all cadmium compounds, 0.05 mg/cubic meter for lead, 0.5 mg/cubic meter for all non-hexavalent chromium compounds, 0.05 mg/cubic meter for water-soluble hexavalent chromium compounds, and 0.01 for insoluble hexavalent chromium compounds.

The protections available in occupational settings are not available for non-industrial, indoor spray applicators of the substances covered by this proposed rule.

#### E. Available Use Data (Ref. 4)

Table 3 of this unit shows what were once aerosol spray applications of the pigments of concern. No production volume data for paints containing these pigments are available; however, an industry survey (Ref. 5) found that most uses were discontinued by 1994. The only exceptions were products intended for high temperature applications with pigments of cadmium or chromium and as a chromate component in primer of a specialized market. In addition, the survey provider, the National Paint and Coatings Association (NPCA), reported a lengthy history of manufacturing phase-outs for aerosol products containing lead, chromium, and cadmium. The overwhelming majority of NPCA member manufacturers responded that products containing the heavy metal pigments were no longer produced. As previously stated and based on the available data, EPA has tentatively

concluded that no non-industrial, indoor spray applications of these paints are ongoing (Ref. 4). The Agency

seeks comment on this tentative conclusion.

TABLE 3.—AEROSOL SPRAY PAINTS CONTAINING PIGMENTS OF LEAD, CHROMIUM, OR CADMIUM WHICH WERE ONCE IN COMMERCIAL USE AS NON-INDUSTRIAL, INDOOR APPLICATIONS

Chemical name	CAS No.	Use in aerosol spray paints
C.I. Pigment Orange 20	12656-57-4	Retouching auto finishes, and for engine enamels, high temperature applications*
Chromic Acid, Lead(2+) Salt (1:1)	7758-97-6	Retouching auto finishes, rust-inhibitive primers, traffic marking, engine enamels, and high-temperature applications*
Chromium Lead Molybdenum Oxide	12709-98-7	Retouching auto finishes, engine enamels, and high-temperature applications*
C.I. Pigment Red 104 (Also known as Molybdate Orange)	12656-85-8	Retouching machinery equipment and automotive finishes, engine enamels, and high-temperature applications*
Lead Molybdenum Oxide	10190-55-3	Retouching auto finishes, engine enamels and high temperature applications*
Sulfuric Acid, Lead (2+) Salt	7446-14-2	Component of molybdate orange and used as a white pigment

\* High temperature applications, are applications of paint on automotive parts (such as exhaust manifolds or machinery equipment) while hot due to normal operation conditions.

## VI. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a SNUN. Rather, 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)). However, a SNUN submitted without accompanying test data may increase the likelihood that EPA will take action under TSCA section 5(e).

Should EPA finalize this proposed rule, the Agency would encourage persons to consult with it before submitting a SNUN or before selecting a protocol for testing of any of the chemical substances listed in Table 2 of Unit III. As part of this optional pre-notification consultation, EPA would discuss specific test data it believes are necessary to evaluate a significant new use of these chemical substances and advise the submitter on the selection of test protocols. The Agency would request that all test data be developed according to TSCA Good Laboratory Practice Standards set forth in 40 CFR part 792. Failure to do so could result in EPA's finding that submitted data are insufficient to reasonably evaluate the health effects of these chemical substances.

Should EPA finalize this proposed rule, it would urge SNUN submitters to provide detailed information on human exposure that may result from the significant new use of the chemical substances listed in Table 2 of Unit III, and at § 721.4583 of the proposed regulation. In addition, EPA would encourage persons to submit information on potential benefits of these chemical substances and

information on risks posed by the chemical substances compared to risks posed by possible substitutes.

## VII. Applicability to Uses Occurring After the Date of Publication of this Proposed SNUR

EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use if it occurs after the date of the proposed SNUR rather than after the effective date of the final rule. Otherwise, uses commenced during the proposed SNUR period would be considered ongoing, rather than new, and it would be difficult for EPA to establish final SNUR notification requirements, because any person could defeat the SNUR rulemaking by initiating the proposed significant new use before the rule became final and then argue that such a use was ongoing.

Persons who begin commercial manufacture, import, or processing of the six compounds listed in Table 2 of Unit III, for the significant new use listed in this proposed SNUR after the date of publication of the proposed SNUR must stop that activity before the effective date of the final rule. Persons who ceased those activities will have to meet all final SNUR notification requirements and wait until the end of the notification review period, including all extensions, before recommencing their activities. If, however, persons who begin commercial manufacture, import, or processing of these chemical substances between the date of publication of the proposed SNUR and the effective date of the final SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be

considered to have met the final SNUR requirements for those activities.

## VIII. Alternatives

### A. Promulgate a Chemical Specific TSCA Section 8(a) Reporting Rule for the Chemical Substances Listed in Table 2 of Unit III.

Under TSCA section 8(a), EPA could require persons to report information to the Agency when they intend to manufacture, import, or process the chemical substances listed in Table 2 of Unit III, for non-industrial, indoor spray application. However, the use of TSCA section 8(a) rather than SNUR authority would not provide the opportunity for EPA to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about these chemical substances and its interest in having the opportunity to regulate these substances further as needed, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for those chemical substances would not meet all of EPA's regulatory objectives.

### B. Regulate the Chemical Substances Listed in Table 2 of Unit III. Under TSCA Section 6

EPA may regulate under TSCA section 6 (15 U.S.C. 2605) if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or

mixture "presents or will present" an unreasonable risk of injury to human health or the environment. There is insufficient information about prospective manufacture, import, or processing operations at this time to enable EPA to make a reasoned determination of risk. Therefore, EPA is not able to take action under TSCA section 6 to regulate the subject compounds at this time. The final SNUR would facilitate the Agency's consideration of potential risks associated with any intended significant new use of these chemical substances.

#### IX. Economic Analysis

EPA evaluated the potential costs of establishing a final SNUR on the substances listed in Table 2 of Unit III. If this proposal becomes final, the manufacture, import or processing of any amount of one or more of the six chemical substances listed in Table 2 of Unit III. in aerosol spray paint for non-industrial, indoor spray application would be reportable. While there is no precise way to calculate the total annual cost of compliance with this proposed SNUR, EPA estimates that the reporting cost for submission of a SNUN ranges from \$8,457 to \$9,692 which includes a \$2,500 user fee. The corresponding time burden to complete a SNUN would average 119.92 hours. EPA believes that there would be few, if any, SNUNs submitted. Furthermore, while the expense of a notification and the uncertainty of possible EPA regulation may discourage certain innovations, the impact would be limited because those factors are unlikely to deter an innovation that has high potential value. The Agency's economic analysis is available in the public record for this proposed SNUR (Ref. 6).

#### X. References

These references have been placed in the official record that was established under docket control number OPPTS-50640 for this rulemaking as indicated in Unit I.B.2. Reference documents identified with an administrative record number (AR) are cross-indexed to non-regulatory, publically accessible information files maintained in the TSCA Nonconfidential Information Center. Copies of the documents can be obtained as described in Unit I.B.2.

1. (AR098-07) OPPT Structure Activity Team (SAT) Health Assessment of the Aerosol Spray Paint Cluster. pp. 48, 51, 56, 58, 59, and 60. April 16, 1992.

2. (AR098-06) Indoor Air Cluster Report: Consumer Exposure to Components of Aerosol Spray Paint. November 10, 1992.

3. (AR098-02) OPPT RM1 Dossier: Aerosol Spray Paints Indoor Air Screen Cluster. December 28, 1992.

4. (AR098-029) RM2 Use Cluster for Aerosol Spray Paints Draft Final Report Preliminary Screening, Sherry Wise, USEPA/OPPT/EETD/RIB. November 1994.

5. (AR098-026) Letter and attachment from Stephen R. Sides, Director, Health and Safety Affairs National Paint and Coatings Association, to Christina Cinalli. EPA. June 7, 1994.

6. (AR098-032) Memorandum and attachment of Economic Assessment for the Proposed SNUR on Certain Chemical Substances Used in Aerosol Spray Paint Intended for Non-industrial, Indoor Spray Application from Timothy S. Lehman. EPA. February 27, 2001.

7. (AR098-033) Toxicological Profile for Lead (Update). Agency for Toxic Substances and Disease Registry. Atlanta, GA, 1993.

8. (AR098-034) Toxicological Profile for Cadmium (Update). Agency for Toxic Substances and Disease Registry. Atlanta, GA, 1999. Available in EPA Headquarters Library.

9. (AR098-035) Integrated Risk Information System Toxicological Review on Chromium (VI). EPA. Washington, DC, 1998.

10. (AR098-036) Integrated Risk Information System Toxicological Review on Cadmium. EPA. Washington, DC, 1998.

11. (AR098-037) Integrated Risk Information System Toxicological Review on Lead and Compounds (inorganic). EPA. Washington, DC, 1998.

12. (AR098-038) Monographs on the Evaluation of Carcinogenic Risk to Humans. Supplement 7. International Agency for Research on Cancer. Lyon, France, 1986.

13. (AR098-039) Monographs on the Evaluation of Carcinogenic Risk to Humans. Volume 49. International Agency for Research on Cancer. Lyon, France, 1990.

14. (AR098-040) Monographs on the Evaluation of Carcinogenic Risk to Humans. Volume 58. International Agency for Research on Cancer. Lyon, France, 1993.

15. (AR098-041) Tsuchiya, R., 1986. Lead. *Handbook on the Toxicology of Metals*. Volume II. L. Friberg, G.F. Nordberg, and V.B. Vouk, Eds. Elsevier, Amsterdam. Chapter 14, p. 298.

16. (AR098-042) Friberg, L., Kjellstrom, T., and Nordberg, G.F., 1986. Cadmium. *Handbook on the Toxicology of Metals*. Volume II. L. Friberg, G.F. Nordberg, and V.B. Vouk, Eds. Elsevier, Amsterdam. Chapter 7, p. 130.

17. (AR098-043) ACGIH Worldwide. 2001 TLVs and BEIs: Threshold Limit

Values for Chemical Substances and Physical Agents and Biological Exposure Indices. Cincinnati, OH. <http://www.acgih.org>.

#### XI. Regulatory Assessment Requirements

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 SNURs are not significant regulatory actions subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or tribal government would be impacted by this rulemaking. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Similarly, this action is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This rule, if finalized, would not have tribal implications because it is not expected to have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000).

However, in the spirit of Executive Orders 13132 and 13175, and consistent with EPA policy to promote communications among EPA, State and Tribal governments, EPA specifically solicits additional comment on this proposed rule from State and Tribal officials.

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), and the "Attorney General's Supplemental Guidelines for the

Evaluation of Risk and Avoidance of Unanticipated Takings" in the preparation of this proposed rule.

This action does not involve special considerations of environmental justice related issues which would be addressed under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined and hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. 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 only requires that any person who intends to engage in such activity in the future must first notify EPA (by submitting a SNUN), no significant economic impact will even occur until someone decides to engage in those activities. 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 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impact of complying with this SNUR are not expected to be significant or adversely impact a

substantial number of small entities. In a SNUR that was published on June 2, 1997 (62 FR 29684) (FRL-5597-1), 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.

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, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

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. 1188.06). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 119.92 hours per response and to cost ranged from \$8,457 to \$9,692 including the \$2,500 EPA user fee (set at \$100 for businesses with annual sales of less than \$40 million). 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 significant new use notice, and maintain the required records.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, as instructed in Unit I.C. or to the Director, Collection Strategies Division, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any information collection forms to this address.

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355, May 21, 2001), because this action is not a significant regulatory action under Executive Order 12866, nor is it

expected to adversely affect energy supply, distribution, or use.

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

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

Dated: December 21, 2001.

**William H. Sanders III,**

*Director, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR chapter I is proposed to be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

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

2. By adding two new definitions in alphabetical order in § 721.3 to read as follows:

#### § 721.3 Definitions.

\* \* \* \* \*

*Aerosol spray paint* means a liquid mixture, usually of a solid pigment in a liquid medium, sold in pressurized containers and applied to a surface to form a decorative or protective coating. Aerosol spray paints are sold in individual containers whose contents are applied without aid of an air compressor or other external aspirating device.

\* \* \* \* \*

*Indoor spray application* means any application as a liquid from a pressurized container within a confined space including but not limited to inside a building, tank, vessel, motor vehicle, or other structure. Indoor application to objects intended for outdoor use, e.g., spray painting lawn furniture in a basement for outdoor use, is included within the meaning of indoor spray application.

\* \* \* \* \*

3. By adding a new § 721.4583 to read as follows:

#### § 721.4583 Certain compounds of lead, chromium, and cadmium.

(a) *Chemical substances and significant new uses subject to reporting.*  
 (1) The chemical substances, C.I. Pigment Orange 20 (CAS No. 12656-57-4); Chromic Acid, Lead(2+) Salt (1:1) (CAS No. 7758-97-6); Chromium Lead Molybdenum Oxide (CAS No. 12709-98-7); Lead Molybdenum Oxide (CAS No. 10190-55-3); Sulfuric Acid, Lead(2+) Salt (1:1) (CAS No. 7446-14-2); and C.I. Pigment Red 104 (CAS No. 12656-85-8) are subject to reporting under this section for the significant

new uses described in the paragraph (a)(2) of this section.

(2) The significant new use is use of any of the six chemical substances listed in paragraph (a)(1) of this section in aerosol spray paint for non-industrial, indoor spray application.

(b) [Reserved]

[FR Doc. 02-963 Filed 1-14-02; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 51

[CC Docket No. 01-337, FCC 01-360]

#### Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** This document seeks comment on changes, if any, the Commission should make to its traditional regulatory requirements for incumbent local exchange carriers' (LECs) broadband service. In particular, it asks: What the relevant product and geographic markets should be for broadband services; whether incumbent LECs possess market power in any relevant market; and whether dominant carrier safeguards or other regulatory requirements should govern incumbent LECs provision of broadband service.

**DATES:** Comments are due March 1, 2002 and Reply Comments are due April 1, 2002.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 01-337, FCC 01-360, adopted December 12, 2001, and released December 20, 2001. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. It is also available on the Commission's Web site at <http://www.fcc.gov>.

#### Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. In this proceeding, the Commission initiates an examination of appropriate

regulatory requirements for incumbent LECs' provision of domestic broadband telecommunications services (broadband services). The NPRM focuses on traditional Title II common carrier regulation, arising largely out of sections 201 and 202 of the Communications Act of 1934, as amended, as applied to incumbent LEC provision of broadband services. In particular, the Commission seeks comment on what regulatory safeguards and carrier obligations, if any, should apply when a carrier that is dominant in the provision of traditional local exchange and exchange access services provides broadband service.

2. The Commission asks for comments on the nature and scope of the market for domestic broadband services. It also seeks comment on the relevant market dynamics—including intermodal competition and the nascent stage of market development for residential broadband services—affecting the provision of domestic broadband services. The Commission requests comment on the appropriate regulatory requirements under Title II of the Act for the provision of broadband services by incumbent LECs given current market conditions.

3. In particular, the Commission asks interested parties to address how the Commission can best balance the goals of encouraging broadband investment and deployment, fostering competition in the provision of broadband services, promoting innovation, and eliminating unnecessary regulation. As part of this proceeding, the Commission also invites comment on the Petition filed by SBC Communications on October 3, 2001, requesting an expedited ruling that it is non-dominant in the provision of broadband services, and asking the Commission to forbear from dominant carrier regulation of those services.

4. Background. The NPRM summarizes the various regulatory requirements the Commission has developed in the past, which involve streamlining regulation of firms in increasingly competitive markets, and competitive safeguards to ensure competition in related markets.

5. Identification of Incumbent LEC-Provided Broadband Services Markets. The Commission asks for comment aimed at defining and analyzing the relevant markets in which incumbent LECs provide these broadband services. Consistent with Commission precedent, our regulatory response should be guided by a full understanding of the existing market dynamics for broadband services. The Commission begins its analysis by asking questions about the relevant product and geographic

markets for incumbent LEC-provided broadband services. It then analyzes what, if any, market power the incumbent LECs may possess in the relevant markets for broadband services.

6. Appropriate Regulatory Requirements. Once the Commission has defined the relevant product and geographic markets for broadband services, it can use this information to determine what regulatory requirements, if any, should govern the provision of broadband services. The Commission begins by briefly describing relevant portions of the existing regulatory structure for broadband services provided by incumbent LECs. Then it invites interested parties to propose alternative requirements for these broadband services in light of existing market and technological developments. The Commission encourages interested parties to develop proposals for new or modified regulatory requirements for broadband services.

#### I. Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in section V.B. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### II. Need for, and Objectives of, the Proposed Rules

8. In this proceeding, the Commission seeks comment on: (1) The nature and scope of the market for domestic broadband services; (2) the relevant market dynamics affecting the provision of domestic broadband services; and (3) the appropriate regulatory requirements for the provision of broadband services by incumbent LECs, given current market conditions. The basic elements of the existing regulatory requirements for incumbent LEC-provided broadband services were initially developed in an era of circuit-switched, analog voice services, and may no longer serve the public interest. Thus, the Commission asks interested parties to address how it can best balance the goals of