

at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. If the Commissioner decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. The regulation

pertaining to user fee airports is 19 CFR 122.15. It addresses the procedures for obtaining permission to land at a user fee airport, the grounds for withdrawal of a user fee designation and includes the list of user fee airports designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b. Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been recently designated by the Commissioner. On January 28, 2011, the Commissioner signed an MOA approving the designation of user fee status for Dallas Love Field Municipal Airport. This document updates the list of user fee airports by adding Dallas Love Field Municipal Airport, in Dallas, Texas, to the list.

## II. Statutory and Regulatory Requirements

### A. Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely updates the list of user fee airports to include an airport already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes additional burdens on, nor take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

### B. The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

### C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### D. Executive Order 13132

The rule 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. Therefore, in accordance with section 6 of Executive

Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### E. Signing Authority

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

### List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

## PART 122—AIR COMMERCE REGULATIONS

■ 1. The authority citation for Part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

### § 122.15 [Amended]

■ 2. The listing of user fee airports in section 122.15(b) is amended by adding, in alphabetical order, in the "Location" column "Dallas, Texas" and in the "Name" column, "Dallas Love Field Municipal Airport".

Dated: May 24, 2011.

**Alan D. Bersin,**

*Commissioner, U.S. Customs and Border Protection.*

[FR Doc. 2011-13615 Filed 6-1-11; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1310

[Docket No. DEA-228F]

RIN 1117-AA66

### Chemical Mixtures Containing Listed Forms of Phosphorus and Change in Application Process

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rulemaking finalizes a June 25, 2010, notice of proposed rulemaking in which DEA proposed regulations which establish those chemical mixtures containing red phosphorus or hypophosphorous acid and its salts (hereinafter "regulated phosphorus") that shall automatically qualify for exemption from the

Controlled Substances Act (CSA) regulatory controls. Chemical mixtures containing red phosphorus in a concentration of 80 percent or less and mixtures containing hypophosphorous acid and its salts (hypophosphite salts) in a concentration of 30 percent and less, shall qualify for automatic exemption. DEA is not implementing automatic exemption for any concentration of chemical mixtures containing white phosphorus (also known as yellow phosphorus). Unless otherwise exempted, all material containing white phosphorus shall become subject to CSA chemical regulatory controls regardless of concentration.

DEA recognizes that concentration criteria alone cannot identify all mixtures that warrant exemption; therefore, an application process has been implemented which allows manufacturers to apply for exemption from CSA regulatory controls for those phosphorus chemical mixtures that do not qualify for automatic exemption. This rulemaking also finalizes changes to the application review and notification process.

**DATES:** This rulemaking becomes effective July 5, 2011. Persons seeking registration must apply on or before July 5, 2011 to continue their business pending final action by DEA on their application.

**FOR FURTHER INFORMATION CONTACT:** Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone (202) 307-8784.

**SUPPLEMENTARY INFORMATION:**

**DEA's Legal Authority**

DEA implements the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and Controlled Substances Import and Export Act (21 U.S.C. 801-971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to end. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical purposes and to deter the diversion of controlled substances to illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with

DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA, as amended, also requires DEA to regulate the manufacture, distribution, importation, and exportation of chemicals that may be used to manufacture controlled substances. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

**Purpose of This Rule**

In this rule, DEA is finalizing concentration limits on chemical mixtures containing red phosphorus and/or hypophosphorous acid and its salts. This rule is being finalized as proposed. Chemical mixtures containing either of these listed chemicals at or below the concentration limit will be automatically exempt from CSA regulatory controls. Mixtures containing these chemicals above the concentration limit will be regulated as List I chemicals. DEA did not propose automatic exemption for chemical mixtures containing white phosphorus. Unless otherwise exempted, all material containing white phosphorus shall be subject to CSA chemical regulatory controls regardless of concentration.

**DEA's Requirement To Identify Exempt Chemical Mixtures**

The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) (CDTA) created a definition for the term "chemical mixture" (21 U.S.C. 802(40)). The CDTA also established 21 U.S.C. 802(39)(A)(vi) to exclude "any transaction in a chemical mixture" from the definition of a "regulated transaction." This exemption was exploited by those that traffic chemicals for illicit purposes in that it provided an unregulated source for obtaining listed chemicals for use in the illicit manufacture of controlled substances.

In April 1994, the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103-200) (DCDCA) corrected this situation by subjecting such chemical mixtures to CSA regulatory requirements, unless specifically exempted by regulation. These requirements included recordkeeping, reporting, and security for all regulated chemical mixtures with the additional requirement of registration for handlers of List I chemicals including regulated chemical mixtures. The DCDCA also provided the Attorney General with the authority to establish regulations to exempt chemical mixtures from the definition of a "regulated transaction." A chemical mixture can be granted

exemption "based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered" (21 U.S.C. 802(39)(A)(vi)). This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 (Subpart R).

DEA has treated all regulated chemical mixtures as non-regulated chemicals until such time that it promulgates a final rule that identifies concentration limits, above which the chemical mixtures are regulated. This served to prevent the immediate regulation of all qualified mixtures, which is not necessary. It also allowed DEA to gather information to implement regulations pursuant to 21 U.S.C. 802(39)(A)(vi).

**Chemical Mixture Definition**

21 U.S.C. 802(40) defines the term "chemical mixture" as "a combination of two or more chemical substances, at least one of which is not a List I chemical or a List II chemical, except that such term does not include any combination of a List I chemical or a List II chemical with another chemical that is present solely as an impurity." Therefore, a chemical mixture contains any number of listed chemicals in combination with any number of non-listed chemicals.

DEA does not consider a chemical mixture to mean the combination of a listed chemical and an inert carrier. An inert carrier can be any chemical that does not modify the function of the listed chemical but is present to aid in the delivery of the listed chemical. Examples include, but are not limited to, dilutions in water, alcohol, or the presence of a carrier gas.

In determining which chemical mixtures shall be subject to control, DEA considers the actual and potential clandestine use of such material. 21 U.S.C. 802(39)(A)(vi) states that an exemption can be granted if "the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered." It should be noted that the requirements described by statute do not allow for exemptions based on such business practices as selling only to known customers, the cost of the mixture, the customer's knowledge of the product's chemical content, packaging, or such related topics.

In 2003, DEA published a Final Rule (68 FR 23195, May 1, 2003) that

identified exempt mixtures containing the chemicals ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, and pseudoephedrine. The effective date of this Final Rule was June 2, 2003. In a second Final Rule (69 FR 74957, December 15, 2004; corrected at 70 FR 294, January 4, 2005) DEA finalized regulations which addressed the exemption of chemical mixtures for 27 of the remaining 38 listed chemicals. However, chemical mixtures containing phosphorus were not included. The effective date for that Final Rule was January 14, 2005.

#### **Uses of Chemical Mixtures Containing Regulated Phosphorus**

Chemical mixtures that contain red phosphorus are used in the manufacture of plastics, flame retardants, pyrotechnics, striker plates (*e.g.*, for safety matches and flares), incendiary shells, smoke bombs, and tracer bullets. Chemical mixtures containing hypophosphorous acid salts (*e.g.*, hypophosphite salts) function as catalysts, stabilizers, and growth inhibitors. They are used in plastics, films, paints, paper products, and fibers with applications that include automotive parts, furniture, wiring, containers, and housings for appliances and power tools. DEA has not identified any chemical mixtures containing white phosphorus.

#### **Diversion of Chemical Mixtures Containing Regulated Phosphorus**

Regulated phosphorus plays an important role in the chemical reaction to produce methamphetamine, a schedule II controlled substance for which the public health consequences of the manufacture, trafficking, and abuse are well known and documented. DEA has documented that the predominant method for the illicit manufacture of methamphetamine utilizes phosphorus.

DEA has identified chemical mixtures containing red phosphorus at domestic illicit methamphetamine manufacturing sites. Traffickers sometimes utilize the striker plates of safety matchbooks or boxes or road flares as a source of red phosphorus. The coating on the striker plate contains from 25 to 60 percent red phosphorus. An estimated 20 to 400 striker plates are needed to obtain one gram of red phosphorus. One gram of red phosphorus could yield approximately 1.5 grams of methamphetamine hydrochloride, which is the end product of clandestine manufacturing.

#### **Concentration Limits for Exempt Chemical Mixtures Containing Regulated Phosphorus**

DEA is establishing concentration limits for chemical mixtures containing phosphorus. All chemical mixtures that have a concentration at or below the established concentration limit shall be automatically exempt from CSA chemical regulatory controls. Those chemical mixtures having a concentration above the concentration limit shall be List I regulated chemicals and subject to the chemical regulatory requirements of the CSA.

DEA is not aware of any chemical mixtures containing white phosphorus. It is believed that few chemical mixtures in this chemical exist because it is too reactive and unstable when mixed with other chemicals. Since DEA has not identified any white phosphorus mixtures, DEA did not propose a concentration limit for white phosphorus, and, therefore, any chemical mixture containing white phosphorus shall be subject to CSA regulatory control.

Hypophosphorous acid is marketed in aqueous solutions of 50 percent and can be readily used in the illicit manufacture of methamphetamine. Such aqueous solutions of hypophosphorous acid, however, are not considered chemical mixtures and are, therefore, currently subject to DEA chemical regulations, regardless of concentration. (As stated earlier, DEA does not consider a chemical mixture to mean the combination of a listed chemical and an inert carrier. An inert carrier can be any chemical that does not modify the function of the listed chemical but is present to aid in the delivery of the listed chemical. Examples include, but are not limited to, dilutions in water, alcohol, or the presence of a carrier gas.) No chemical mixtures containing hypophosphorous acid have been identified by DEA.

Traffickers use hypophosphite salts and hypophosphorous acid similarly. DEA has identified several chemical mixtures containing hypophosphite salts in combination with other chemicals for use as mold and mildew inhibitors. Additionally, DEA has identified at least one industrial product where sodium hypophosphite is in a chemical mixture in combination with resins. The concentration of hypophosphite salts within these chemical mixtures does not exceed 20 percent.

The above chemical mixtures have limited potential for use in a clandestine laboratory because of the: (a) Low concentrations of the hypophosphite

salts, and (b) interference from other chemicals in the mixtures. Therefore, DEA is establishing a 30 percent concentration limit for hypophosphorous acid and its salts (hypophosphite salts).

It is important to clarify, again, that DEA does not consider a chemical mixture to mean the combination of a listed chemical and an inert carrier. Therefore, solutions of hypophosphorous acid or hypophosphite salt in water, alcohol, or another inert carrier are not considered chemical mixtures and are, therefore, currently subject to DEA chemical regulatory controls regardless of concentration.

As discussed above, only the smallest clandestine methamphetamine laboratories use chemical mixtures obtained from matchbook striker plates as a source of red phosphorus. Although concerned about this type of diversion, DEA determined that the regulation of matchbook striker plates is impractical and will create undue administrative burdens for both law enforcement and the regulated sector.

DEA is establishing an 80 percent concentration limit for red phosphorus. DEA has determined that chemical mixtures containing over 80 percent red phosphorus are useful in large scale methamphetamine production and, therefore, should not be automatically exempt from regulatory controls.

A chemical mixture having a regulated form of phosphorus at or below the concentration limit can still be a regulated chemical mixture if another listed chemical is present above its concentration limit. The exemption of chemical mixtures from regulatory controls does not remove criminal liability for persons who knowingly sell or possess any products containing regulated phosphorus for use in violation of the CSA.

#### **Comments to the Notice of Proposed Rulemaking**

In response to the June 25, 2010, Notice of Proposed Rulemaking (75 FR 36306), DEA received two comments. The first comment was received from a large chemical company. This firm indicated that they have one product which they export which shall become subject to regulation. However, the firm stated that they will not be significantly impacted by this rulemaking and supported the mixture criteria proposed in the rule. Furthermore, the comment commended DEA for taking a reasonable approach.

*DEA Response.* DEA appreciates this comment and believes that the concentration limits finalized in this

rule are reasonable based on the illicit uses of phosphorus mixtures.

The second comment was from an association representing full-service wholesale healthcare distributors. Their members distribute more than 9 million prescription and healthcare products. The comment stated that they reached out to their members in an attempt to identify specific products containing phosphorus which would be subject to the proposed regulatory controls. Their review indicated that they do not believe that any healthcare product distributors' products are subject to the proposed rule. However, the association expressed concern that wholesale distributors may be subjected to a rule without sufficient ability to provide meaningful public comment. The commenter posited that, during the comment period, other public comments may be received that would contain further information about products that could be subject to the rule and which may also pertain to products distributed by healthcare product distributors. The association recommended that DEA reopen the rule's comment period if the notice and comment period resulted in DEA obtaining further information relevant to the chemical mixtures or products potentially subject to the rule.

**DEA Response.** As DEA did not receive other comments to the NPRM identifying chemical mixtures containing listed forms of phosphorus, DEA believes that it has thoroughly examined the number and types of mixtures potentially affected by this rule and has adequately addressed the impact of this rule on the regulated community. DEA notes, in fact, that the only other commenter to this rule supported the rule as proposed. This conclusion is consistent with information developed by DEA, through DEA's research and comments received in response to the Advanced Notice of Proposed Rulemaking published January 31, 2003, (68 FR 4968) which specifically sought such information from interested parties. DEA does not believe that any products distributed by healthcare distributors will fall under the regulatory controls being finalized here. Therefore, DEA does not believe that this final rule will have any impact on this association's members.

After careful consideration of the comments received, DEA is hereby finalizing these regulatory controls exactly as proposed in the June 25, 2010, Notice of Proposed Rulemaking (75 FR 36306).

### Exemption by Application Process

DEA recognizes that the concentration limits established in this rule may not identify all phosphorus mixtures that should receive exemption status. DEA has implemented an application process to exempt additional mixtures (21 CFR 1310.13). This application process was finalized in the Final Rule (68 FR 23195) published May 1, 2003. Under the application process, manufacturers may submit an application for exemption for those mixtures that do not qualify for automatic exemption. Exemption status can be granted if DEA determines that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and the listed chemical cannot be readily recovered (*i.e.*, it meets the conditions in 21 U.S.C. 802(39)(A)(vi)). An application may be for a single or a multiple number of formulations. All chemical mixtures which are granted exemption via the application process will be listed in 21 CFR 1310.13(i).

This rulemaking also establishes changes to the existing application process. 21 CFR 1310.13(e) provides that within 30 days after the receipt of an application for an exemption, the Administrator will notify the applicant of acceptance or rejection of the application. This paragraph is being modified in order to clarify that this acceptance or rejection only pertains to the acceptance or rejection of the application "for filing" and does not pertain to the granting or denial of the application based upon the merits of the application. Furthermore, DEA is modifying this paragraph by removing the 30 day timeframe for notification, and instead, specify that such notification be "in writing" and "within a reasonable period of time".

### Thresholds and Excluded Transactions for Regulated Phosphorus Chemical Mixtures

Regulated phosphorus compounds do not have a threshold as described in 21 CFR 1310.04(g)(1). Thus, all transactions in regulated phosphorus, including its regulated chemical mixtures, are regulated transactions. Certain transactions, described in 21 CFR 1310.08 are excluded from the definition of a regulated transaction. These are domestic and international return shipments of reusable containers from customer to producer containing residual quantities of red phosphorus or white phosphorus in rail cars and intermodal tank containers which conform to International Standards Organization specifications (with

capacities greater than or equal to 2500 gallons in a single container). This exclusion also applies to regulated chemical mixtures containing red phosphorus or white phosphorus.

### Requirements That Apply to Regulated List I Chemical Mixtures

Persons interested in handling List I chemicals, including regulated chemical mixtures containing List I chemicals, must comply with the following:

**Registration.** Any person who manufactures, distributes, imports, or exports a List I chemical, or proposes to engage in the manufacture, distribution, importation, or exportation of a List I chemical, must obtain a registration pursuant to the CSA (21 U.S.C. 823, 957). Regulations describing registration for List I chemical handlers are set forth in 21 CFR part 1309.

Separate registration is required for manufacturing, distribution, importing, and exporting. Different locations operated by a single entity require separate registration if any location is involved with the manufacture, distribution, import, or export of a List I chemical. Any person manufacturing, distributing, importing, or exporting a regulated List I chemical mixture is subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who manufacture, distribute, import, or export regulated phosphorus compounds to immediately complete and submit an application for registration and for DEA to issue registrations immediately for those activities. Therefore, to allow continued legitimate commerce in the compounds, DEA is establishing in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to manufacture, distribute, import, or export regulated phosphorus compounds, provided that DEA receives a properly completed application for registration on or before July 5, 2011. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, will remain in effect. Additionally, the temporary exemption does not suspend applicable Federal criminal laws relating to the phosphorus compounds, nor does it supersede state or local laws or regulations. All handlers of these materials must comply with their state and local requirements in addition to the CSA and other Federal regulatory controls.

DEA notes that warehouses are exempt from the requirement of registration and may lawfully possess List I chemicals, if the possession of those chemicals is in the usual course of business (21 U.S.C. 822(c)(2), 21 U.S.C. 957(b)(1)(B)). For purposes of this exemption, the warehouse must receive the List I chemical from a DEA registrant and shall only distribute the List I chemical back to the DEA registrant and registered location from which it was received. All other activities conducted by a warehouse do not fall under this exemption; a warehouse that distributes List I chemicals to persons other than the registrant and registered location from which they were obtained is conducting distribution activities and is required to register as such (21 U.S.C. 802(39)(A)(ii)).

**Records and Reports.** The CSA (21 U.S.C. 830) requires that certain records be kept and reports be made that involve listed chemicals. Regulations describing recordkeeping and reporting requirements are set forth in 21 CFR Part 1310. A record must be made and maintained for two years after the date of a transaction involving a listed chemical, provided the transaction is a regulated transaction.

Each regulated bulk manufacturer of a regulated mixture shall submit manufacturing, inventory and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the mixture solely for internal consumption, e.g., formulating a non-regulated mixture, are not required to submit this information. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

Title 21 CFR 1310.05 requires that each regulated person shall report to DEA any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of the CSA. Regulated persons are also required to report to DEA any proposed regulated transaction with a person whose description or other identifying information has been furnished to the regulated person. Finally, regulated persons are required to report any unusual or excessive loss or disappearance of a listed chemical.

**Import/Export.** All imports/exports of a listed chemical shall comply with the CSA (21 U.S.C. 957 and 971). Regulations for importation and exportation of List I chemicals are

described in 21 CFR Part 1313. Separate registration is necessary for each activity (21 CFR 1309.22).

**Security.** All applicants and registrants shall provide effective controls against theft and diversion of chemicals as described in 21 CFR 1309.71.

**Administrative Inspection.** Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of a regulated chemical/chemical mixture, or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316 subpart A.

The goal of this rulemaking is to deny traffickers access to regulated phosphorus compounds while minimizing the burden on legitimate industry. Persons who obtain a regulated chemical, but do not distribute the chemical, are end users. End users are not subject to CSA chemical regulatory control provisions such as registration or recordkeeping requirements. Some examples of end users are those who chemically react phosphorus compounds and change them into non-listed chemicals, formulate phosphorus compounds into exempt chemical mixtures or consume them in industrial processes.

#### **Technical Revision to 21 CFR 1310.12(a) and 1310.13(i)**

While preparing the June 25, 2010 Notice of Proposed Rulemaking, DEA became aware that references to Section 1018 of the Act (21 U.S.C. 971) were inadvertently omitted from 21 CFR 1310.12(a) and 1310.13(i). Therefore, DEA proposed the amendment of these sections by adding this citation. This Final Rule implements that modification. This insertion is a clarification and does not alter the current treatment of exempt chemical mixtures under the CSA.

As DEA discussed in its December 15, 2004, Final Rule (specifically 69 FR 74963, comment 10) all chemical mixtures not exempt from CSA regulatory controls are subject to all aspects of those controls, including importation and exportation requirements. Thus, chemical mixtures that are exempt under 21 CFR 1310.12 and 1310.13 are also exempt from the requirements of Section 1018 of the Act (21 U.S.C. 971). The requirements of 21 U.S.C. 971 apply to "each regulated

person, who imports or exports a listed chemical." Since a person distributing an exempt chemical mixture is not a "regulated person" as defined by 21 U.S.C. 802(38), that person is exempt from the requirements of 21 U.S.C. 971.

DEA notes that this is a technical correction only. All exempt chemical mixtures have been treated as such for import and export purposes, and all regulated mixtures have been treated as regulated transactions for import and export purposes. DEA is merely including a reference which was inadvertently omitted from this regulatory language.

#### **Regulatory Analyses**

##### **Regulatory Flexibility and Small Business Concerns**

The Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612). The RFA requires agencies to determine whether a rulemaking could have a significant economic impact on a substantial number of small entities. DEA sought comment on two separate occasions regarding this action. On January 31, 2003, DEA published in the **Federal Register** an ANPRM (68 FR 4968) to solicit input from industry regarding chemical mixtures containing regulated phosphorus. DEA received three responses to this request, all from industrial firms. In addition, DEA obtained information on types of formulations containing regulated phosphorus and their uses separate from the ANPRM. All three commenters to the ANPRM informed DEA of commercial applications for their chemical mixtures containing regulated phosphorus. The commenters also informed DEA of concentration ranges for red phosphorus and salts of hypophosphorous acid (e.g. hypophosphite salts). In the NPRM, DEA sought information from manufacturers about the impact of setting concentration limits for chemical mixtures containing phosphorus. Only two comments were received in response to the NPRM. Neither of these comments noted information to change DEA's belief that the cost of compliance with this rule is low and is unlikely to impose a significant cost on any manufacturing, distributing, importing, or exporting firm. DEA has not identified any chemical mixtures containing hypophosphorous acid or white phosphorus either through industry comments or as a result of DEA research. It is possible, therefore, that there are no entities that will be subject to DEA's requirements because of this

rule. Nonetheless, DEA provides the following discussion describing small businesses that might potentially handle these chemical mixtures.

The rules for listed chemicals apply to chemical manufacturers, distributors, importers, and exporters. The chemical manufacturers that would handle mixtures containing phosphorus would probably be classified in the all other basic inorganic chemical manufacturers sector (NAICS 325188). The average value of shipments for chemical manufacturers in this sector with 1–9 employees ranges from \$2 million to \$5.6 million. Because the recordkeeping requirements can be met with standard business records and most firms maintain adequate security to meet DEA's regulations, the only cost directly associated with this rule for a chemical manufacturer would be the DEA registration fee of \$2,293, which represents approximately 0.1 percent of the value of shipments for the smallest firm. DEA assumes that chemical distributors, importers, and exporters that would handle mixtures containing phosphorus fall into the other chemical and allied products merchant wholesalers sector (NAICS 424690). The average revenue of chemical wholesalers with 1–4 employees is approximately \$2.5 million. The only cost directly associated with this rule for a chemical distributor, importer, or exporter would be the DEA registration fee of \$1,147, which represents approximately 0.04 percent of revenue for the smallest chemical wholesalers. Based on both the lack of entities identified that may be subject to this regulation and the low cost of the rule, DEA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### Executive Orders 13563 and 12866

This regulation has been developed in accordance with the principles of Executive Orders 13563 and 12866 and has been reviewed by the Office of Management and Budget. The information DEA received in response to the ANPRM and NPRM indicate that few phosphorus mixtures will be subject to the regulation. Those mixtures appear to be produced by current DEA registrants on whom the rule will impose no new requirements.

As stated earlier in this rulemaking the vast majority of the chemical mixtures that will become subject to this rulemaking have large industrial uses. Regulated chemical mixtures are not items having common household uses. Although concerned about the diversion of matchbook striker plates, DEA determined that the regulation of

matchbook striker plates is impractical and will create undue administrative burdens for both law enforcement and the regulated sector.

**Benefits.** Phosphorus is a chemical important in the clandestine manufacture of methamphetamine and amphetamine. This rule seeks to eliminate the use of certain chemical mixtures whose high concentrations of phosphorus make them valued by traffickers seeking this chemical for their clandestine laboratory operations.

The surge in methamphetamine abuse and the manufacture of the drug in clandestine laboratories have caused serious law enforcement and environmental problems, particularly in rural communities.

This rule is intended to continue the trend of reducing the number of clandestine laboratories. This trend will reduce the cost to state and local governments as well as the hazard to law enforcement officers and others from exposure to the toxic chemicals left behind.

#### Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards and reduce burden.

#### Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$126,400,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Congressional Review Act

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in cost or prices; or significant adverse

effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### Executive Order 13175

This rule will not have Tribal implications and will not impose substantial direct compliance costs on Indian Tribal governments.

#### Paperwork Reduction Act

This rule establishes regulations stating that chemical mixtures containing 80 percent and less of red phosphorus or 30 percent and less of hypophosphorous acid or its salts are automatically exempt from CSA regulatory controls pertaining to chemicals and that no automatic exemption be established for chemical mixtures containing white phosphorus. Under this method of automatic exemption, persons who handle these exempt chemical mixtures will not be subject to CSA regulatory controls, including the requirement to register with DEA, the requirement to report manufacturing activities to DEA annually, and the requirement to file importation and exportation advance notification and return declaration information with DEA. For persons handling regulated chemical mixtures, DEA anticipates granting some of these mixtures exempt status by the application process (21 CFR 1310.13).

Given comments received in response to the NPRM, DEA does not believe that the impact will be significant. DEA anticipates that some chemical mixtures would be granted exemptions based on the application process.

#### List of Subjects in 21 CFR Part 1310

Drug traffic control, List I and List II chemicals, reporting requirements.

For the reasons set out above, 21 CFR part 1310 is amended as follows:

#### PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

■ 1. The authority citation for part 1310 continues to read as follows:

**Authority:** 21 U.S.C. 802, 827(h), 830, 871(b), 890.

■ 2. Section 1310.09 is amended by adding paragraph (m) to read as follows:

#### § 1310.09 Temporary exemption from registration.

\* \* \* \* \*

(m)(1) Each person required by Sections 302 or 1007 of the Act (21

U.S.C. 822, 957) to obtain a registration to manufacture, distribute, import, or export regulated chemical mixtures which contain red phosphorus, white phosphorus, hypophosphorous acid (and its salts), pursuant to §§ 1310.12 and 1310.13, is temporarily exempted from the registration requirement, provided that DEA receives a properly completed application for registration or application for exemption on or before July 5, 2011. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect.

(2) Any person who manufactures, distributes, imports, or exports a chemical mixture which contains red phosphorus, white phosphorus, hypophosphorous acid (and its salts) whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for those persons whose applications are denied, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has not been approved. The temporary exemption for such persons will remain in effect until DEA takes final action on their registration application.

■ 3. Section 1310.12 is amended by revising paragraph (a) and by amending the Table of Concentration Limits in paragraph (c) by adding entries for “hypophosphorous acid and its salts”, “red phosphorus”, and “white phosphorus” in alphabetical order under “List I Chemicals” to read as follows:

**§ 1310.12 Exempt chemical mixtures.**

(a) The chemical mixtures meeting the criteria in paragraphs (c) or (d) of this section are exempted by the Administrator from application of sections 302, 303, 310, 1007, 1008, and 1018 of the Act (21 U.S.C. 822, 823, 830, 957, 958, and 971) to the extent described in paragraphs (b) and (c) of this section.

\* \* \* \* \*

(c) \* \* \*

TABLE OF CONCENTRATION LIMITS

| DEA chemical code No.               | Concentration (percent)                                      | Special conditions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------|--------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| List I Chemicals                    |                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| * * *                               | * * *                                                        | * * *                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Hypophosphorous acid and its salts. | 6797 30% by weight if a solid, weight or volume if a liquid. | The weight is determined by measuring the mass of hypophosphorous acid and its salts in the mixture, the concentration limit is calculated by summing the concentrations of all forms of hypophosphorous acid and its salts in the mixture. The Administration does not consider a chemical mixture to mean the combination of a listed chemical and an inert carrier. Therefore, any solution consisting of hypophosphorous acid (and its salts), dispersed in water, alcohol, or another inert carrier, is not considered a chemical mixture and is therefore subject to chemical regulatory controls at all concentrations. |
| * * *                               | * * *                                                        | * * *                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Red Phosphorus .....                | 6795 80% by weight.                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| * * *                               | * * *                                                        | * * *                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| White phosphorus .....              | 6796 Not exempt at any concentration.                        | Chemical mixtures containing any amount of white phosphorus are not exempt due to concentration, unless otherwise exempted.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| * * *                               | * * *                                                        | * * *                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

\* \* \* \* \*

■ 4. Section 1310.13 is amended by revising paragraph (e) and paragraph (i) introductory text to read as follows:

**§ 1310.13 Exemption of chemical mixtures; application.**

\* \* \* \* \*

(e) Within a reasonable period of time after the receipt of an application for an exemption under this section, the Administrator will notify the applicant in writing of the acceptance or rejection of the application for filing. If the application is not accepted for filing, an explanation will be provided. The Administrator is not required to accept an application if any information required pursuant to paragraph (c) of this section or requested pursuant to

paragraph (d) of this section is lacking or not readily understood. The applicant may, however, amend the application to meet the requirements of paragraphs (c) and (d) of this section. If the exemption is subsequently granted, the applicant shall again be notified in writing and the Administrator shall issue, and publish in the **Federal Register**, an order on the application. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order. If any comments or objections raise significant issues regarding any findings of fact or conclusions of law upon which the order is based, the Administrator may suspend the effectiveness of the order until he has

reconsidered the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, terminate, or amend the original order as deemed appropriate.

\* \* \* \* \*

(i) The following chemical mixtures, in the form and quantity listed in the application submitted (indicated as the “date”) are designated as exempt chemical mixtures for the purposes set forth in this section and are exempted by the Administrator from application of Sections 302, 303, 310, 1007, 1008, and 1018 of the Act (21 U.S.C. 822, 823, 830, 957, 958, and 971):

\* \* \* \* \*



Dated: May 16, 2011.

**Michele M. Leonhart,**  
*Administrator.*

[FR Doc. 2011-13686 Filed 6-1-11; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**33 CFR Parts 1, 27, 96, 101, 107, 115, 117, 135, 140, 148, 150, 151, 160, 161, 162, 164, 166, 167, and 169**

[Docket No. USCG-2011-0257]

RIN 1625-AB69

### Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule makes non-substantive changes throughout Title 33 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard navigation and navigable water regulations. This rule will have no substantive effect on the regulated public. These changes are provided to coincide with the annual recodification of Title 33 on July 1, 2011.

**DATES:** This final rule is effective June 2, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-0257 and are available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2011-0257 in the "Keyword" box, and then clicking "Search."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Leo Huott, Coast Guard; telephone 202-372-1027, e-mail [Leo.S.Huott@uscg.mil](mailto:Leo.S.Huott@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

### SUPPLEMENTARY INFORMATION:

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#### I. Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(A) the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, the Coast Guard finds notice and comment procedures are unnecessary under 5 U.S.C. 553(b)(B) as this rule consists only of corrections and editorial, organizational, and conforming amendments and these changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective upon publication in the **Federal Register**.

#### II. Background

Each year, the printed edition of Title 33 of the Code of Federal Regulations is recodified on July 1. This rule, which becomes effective June 2, 2011, makes technical and editorial corrections throughout Title 33. This rule does not create any substantive requirements.

#### III. Basis and Purpose

This rule amends 33 CFR part 1 to reflect changes in agency organization by removing § 1.01-60(a)(1)(ii) and combining § 1.01-60(a)(1)(i) with § 1.01-60(a)(1). Because the Coast Guard is no longer a component of the Department of Transportation (DOT), DOT Order 5610.1C (Procedures for Considering Environmental Impacts) no longer applies.

This rule revises 33 CFR part 27. The Coast Guard is adjusting fines and other civil monetary penalties to reflect the impact of inflation. These adjustments are made in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and implement the provisions of these statutes. These statutes require the Coast

Guard to periodically adjust the civil monetary penalties for inflation by a method that is specifically prescribed within these statutes and which allows no discretion. The statutory method specifies the inflation measure to be used, the method for the calculation of the inflation adjustment, and the method for the numerical rounding of the results. The last inflation adjustments were made in 2010.

The changes in Civil Penalties for calendar year 2011 are based on the change in CPI-U from June 2009 to June 2010. The recorded change in CPI-U during that period was 1.05%. Because of the small change in CPI-U and the required rules for rounding, there was no change to any of the maximum penalty amounts from the previous adjustment.

This rule amends § 115.05 by replacing the term "builder" with the term "applicant" to clarify the Coast Guard's intent and make the affected provision consistent with other provisions in this section and other sections of part 115. This rule also corrects grammatical errors and details established requirements regarding the information needed on the plan sheets that accompany a bridge permit request. This rule removes § 115.50(d) because the information it provides is already explained throughout the section.

This rule amends 33 CFR part 117 to correct the names of the S14 Bridge and the S1 Bridge and to provide an updated phone number to the Kansas City Southern automated bridge. Also "Pelican Island Causeway" is removed from the title of § 117.977 and the section is redesignated to follow the alphabetical order of state waterways set out in this subpart.

This rule amends parts 135, 140, 148, and 150 of Title 33 with an organizational name change from the Minerals Management Service (MMS) to the Bureau of Ocean Energy Management Regulation and Enforcement (BOEMRE).

This rule amends paragraph 161.15(a) to correct a typographical error that erroneously omitted the words "within a". The correction to the section is not substantive and does not impose any new requirement, but clarifies the meaning of this portion of part 161.

This rule amends 33 CFR part 164 to remove LORAN C from the list of options for vessel electronic position fixing devices. Removing LORAN C from 33 CFR part 164 will have no substantive effect on the public because the use of LORAN C has not been supported by the Coast Guard since February 2010, and this section is no longer applicable.