

2001-20-20 McDonnell Douglas:

Amendment 39-12469. Docket 2001-NM-171-AD. Supersedes AD 2000-20-04, Amendment 39-11915.

Applicability: Model MD-90-30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 02, dated February 28, 2001; and McDonnell Douglas Service Bulletin MD90-24-062, dated February 3, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a loose electrical ground block of the circuit ground wires of the electrical power control unit (EPCU), which could result in complete loss of the primary electrical power of an airplane during flight., accomplish the following:

Note 2: Paragraphs (a) and (b) of this AD merely restate the requirements of paragraph (a) and (b) of AD 2000-20-04, amendment 39-11915. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 2000-20-04 have already been accomplished, this AD does not require that those actions be repeated.

Restatement of the Requirements of AD 2000-20-04

Replacement

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 01, dated September 2, 1999: Within 30 days after November 13, 2000 (the effective of AD 2000-20-04), replace the electrical ground block screws with new screws in accordance with McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 01, dated September 2, 1999.

Note 3: Accomplishment of the replacement of electrical ground block screws prior to November 13, 2000, in accordance with McDonnell Douglas Alert Service Bulletin MD90-24A060, dated July 28, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Modification of the Electrical Power Control Unit

(b) For airplanes listed in McDonnell Douglas Service Bulletin MD90-24-062, dated February 3, 2000: Within 12 months after November 13, 2000 (the effective date of AD 2000-20-04), reterminate the circuit ground wires of the EPCU to separate

grounding points to ensure that a single point failure does not occur, in accordance with McDonnell Douglas Service Bulletin MD90-24-062, dated February 3, 2000.

New Requirements of This AD

Replacement

(c) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 02, dated February 28, 2001, with the exception of those airplanes identified in paragraph (a) of this AD: Within 30 days after the effective of this AD, replace the electrical ground block screws with new screws in accordance with McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 02, dated February 28, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 01, dated September 2, 1999; McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 02, dated February 28, 2001; and McDonnell Douglas Alert Service Bulletin MD90-24-062, dated February 3, 2000; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 02, dated February 28, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90-24A060, Revision 01, dated September 2, 1999, was approved previously by the Director of the Federal Register as of September 19, 2000 (65 FR 49728, August 15, 2000).

(3) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90-24-062, dated February 3, 2000, was approved previously by the Director of the Federal Register as of November 13, 2000 (65 FR 59707, October 6, 2000).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and

Service Management, Dept. C1-L5A (D800-0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on November 1, 2001.

Issued in Renton, Washington, on October 5, 2001.

Vi L. Lipski,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 01-25663 Filed 10-16-01; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309 and 1310

[DEA Number 198F1]

RIN 1117-AA57

Control of Red Phosphorus, White Phosphorus and Hypophosphorous Acid (and its salts) as List I Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final Rule with request for comments.

SUMMARY: This rulemaking finalizes a September 25, 2000 Notice of Proposed Rulemaking (65 FR 57577) in which DEA proposed the addition of red phosphorus, white phosphorus (also known as yellow phosphorus) and hypophosphorous acid (and its salts) as List I chemicals. This action is being taken because of the use and importance of these chemicals in the illicit manufacture of methamphetamine (a Schedule II controlled substance).

As List I chemicals, handlers of these materials will be subject to CSA chemical regulatory controls including registration, recordkeeping, reporting, and import/export requirements. The Drug Enforcement Administration (DEA) has determined that these controls are necessary to prevent the diversion of these chemicals to clandestine drug laboratories.

Given the small quantities of these chemicals necessary for the production of methamphetamine, no threshold is being established for domestic and international transactions. As such, all transactions (regardless of size) shall be considered regulated transactions, subject to recordkeeping, reporting and/

or import/export notification requirements.

DATES: *Effective Date:* This final rule is effective November 16, 2001.

Comment date: Written comments on 21 CFR 1309.29(b), 1309.29(c) and 1310.09(d) must be submitted on or before November 16, 2001.

ADDRESSES: Comments should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307-7183.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

The Controlled Substances Act (CSA) and its implementing regulations, specifically 21 U.S.C. 802(34) and 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, additional chemicals as "List I" chemicals if they are used in the manufacture of a controlled substance in violation of the CSA and are important to the manufacture of the controlled substance. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100.

What Specific Chemicals Does This Regulation Include? What Related Chemicals Will Not Be Subject to This Control Action?

Phosphorus is a nonmetallic element that can occur in three main allotropic (i.e. crystalline) forms (white, red and black). Elemental phosphorus is derived from phosphate rock. The most abundant variety produced is white phosphorus (also known as yellow phosphorus). Most other forms of phosphorus and phosphorus chemicals are produced from white phosphorus.

The second crystalline form is red phosphorus. Red phosphorus is usually prepared as a powder and is more stable and less toxic than the white form. A black crystalline form of phosphorus is also occasionally made and is similar to graphite in its physical, thermal and electrical properties.

The white and red forms of elemental phosphorus are being designated as List I chemicals. Black phosphorus and phosphate rock will not be affected by this action.

Additionally, DEA is adding hypophosphorous acid and its salts as List I chemicals. While hypophosphorous acid (H_3PO_2) is most commonly sold as 10%, 30% or 50%

solutions, control will apply to all aqueous dilutions of hypophosphorous acid. Salts of hypophosphorous acid are known as hypophosphite salts. These salts are also being designated as List I chemicals. Examples of these salts include: Ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite and sodium hypophosphite.

Why Does DEA Believe That Control of Red Phosphorus, White Phosphorus, and Hypophosphorous Acid (and its Salts) Is Necessary?

DEA has identified these chemicals as being used in the illicit production of methamphetamine. The public health consequences of the manufacture, trafficking, and abuse of methamphetamine are well known and documented. The September 25, 2000 NPRM (65 FR 57577) demonstrated how the chemistry and illicit use of these chemicals make them important to the manufacture of methamphetamine and therefore meet the definition of List I chemicals. Hence, this rulemaking makes these chemicals subject to CSA regulatory controls for List I chemicals, including registration, recordkeeping, reporting, and import/export requirements as specified in 21 CFR parts 1309, 1310 and 1313. DEA believes that these regulatory controls are needed to prevent the diversion of these phosphorus chemicals to clandestine laboratories.

What Regulatory Controls Will Apply to These Chemicals?

As List I chemicals, red phosphorus, white phosphorus, and hypophosphorous acid and its salts will be subject to the chemical regulatory control provisions and civil and criminal sanctions of the CSA. As such, recordkeeping, reporting and import/export notification requirements (as described in 21 CFR parts 1310 and 1313) shall apply. Manufacturers, distributors, importers and exporters of white phosphorus, red phosphorus and hypophosphorous acid (and its salts) will be required to register with DEA pursuant to the provisions of 21 CFR part 1309.

Handlers of these chemicals will also be required to maintain records and meet CSA import/export notification requirements for "regulated transactions" of these chemicals. The CSA (21 U.S.C. 802(39)) defines the term "regulated transaction" as a "distribution, receipt, sale, importation, or exportation of, or an international

transaction involving the shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a transaction involving a threshold amount". The CSA, therefore, provides the Attorney General with authority to establish a threshold amount for "listed chemicals" if the Attorney General so elects. This rulemaking does not establish a threshold for red phosphorus, white phosphorus or hypophosphorous acid (and its salts). Therefore, all transactions regardless of size will be considered "regulated transactions".

DEA has endeavored, within this rulemaking, to limit the impact of these regulations on the affected industry. In some instances, as discussed below in the responses to specific comments (e.g., separate registration for separate locations) the specific language of the CSA established the parameters of control. However, in other areas, DEA has been able to take additional steps in these final regulations to lessen the impact of these regulatory requirements on the affected industry, while simultaneously carrying out DEA's mandate of preventing diversion of these chemicals.

When Will These Regulatory Requirements Become Effective?

Effective November 16, 2001, any person distributing, importing, or exporting any of these listed chemicals will become subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who distribute, import, or export any of these listed chemicals to immediately complete and submit an application for registration and for DEA to immediately issue registrations for those activities. Therefore, in order to allow continued legitimate commerce in these listed chemicals, DEA is establishing in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to distribute, import, or export red phosphorus, white phosphorus and hypophosphorous acid (and its salts), provided that DEA receives a properly completed application for registration on or before December 17, 2001. 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, are effective on November 16, 2001. Additionally, the temporary exemption does not suspend applicable Federal

criminal laws relating to these listed chemicals, nor does it supersede state or local laws or regulations. All handlers of the listed chemicals must comply with applicable state and local requirements in addition to the CSA regulatory controls.

Comments

DEA received eight comments in response to the NPRM. While the general tone of the comments was supportive of efforts to prevent the flow of listed chemicals to clandestine laboratories, the commentors raised a number of concerns regarding certain provisions of the proposed regulation.

Registration

1. Four commentors expressed concerns regarding the registration requirement for handlers of List I chemicals. These commentors requested clarification as to the need for the List I registration requirement and expressed the belief that List II controls would be adequate to address the diversion problem.

DEA strongly believes that given the nature of the diversion of red phosphorus, white phosphorus and hypophosphorous acid (and its salts), the registration requirement is necessary in order to effectively prevent diversion. While neither DEA nor any commentors identified any household uses for any of these chemicals, they have been widely distributed by firms engaged primarily in retail sales to the general public.

The CSA requires persons who distribute, import or export a List I chemical to obtain a registration and requires that DEA determine if such registration would be in the public interest pursuant to the criteria set forth in 21 U.S.C. 823(h). Each registration applicant would be subject to a separate pre-registration investigation that would require, among other things, a visit to the applicant's place of business and a determination as to whether the criteria regarding public interest are met. DEA will closely scrutinize each registration applicant to ensure that only those who distribute these chemicals for legitimate purposes become and remain registered.

DEA has also noted that these chemicals have commonly been sold via the Internet to the general public. DEA has strong concerns regarding the sale of these chemicals via such means. DEA believes that those Internet sites which choose not to prohibit the sales of such items should, at a minimum, require sellers to provide proof of DEA registration prior to listing such items for sale. The registration requirement is essential to identify rogue distributors

and eliminate the ability of firms to illegally distribute these chemicals.

2. Two commentors stated that the List I registration requirement would place a significant burden on industry. One of these commentors, a major national trade association, stated that it had identified six member firms which distribute hypophosphorous acid (and its salts). The commentor further stated that two of these members have between 22 and 30 facilities and expressed concerns regarding the need to register each location. One additional commentor objected to the requirement that a separate registration be obtained at each location at which List I chemicals activities are carried out. The commentor suggested that DEA allow companies to obtain a single registration, with attendant fee, for multiple locations.

The law, however, is specific on this point. The Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103-200) requires that a separate registration be obtained at each location at which the List I chemicals are distributed, imported or exported (21 U.S.C. 822(e) and 958(h)).

3. The previously-mentioned trade association also expressed concerns that if a firm handles multiple phosphorus chemicals, then they must obtain multiple registrations. However, DEA wishes to emphasize that registration is by individual location (and not by chemicals handled). Only one registration is required for a firm which handles multiple listed chemicals at a single location.

Furthermore, there is the likelihood that chemical distributors represented by this trade association are already registered with DEA since they may already handle other listed chemicals. Therefore these firms would not be required to obtain a new registration, and instead, would only be required to add additional chemicals to their existing registration. No additional fees are required to make such additions.

Additionally, DEA is attempting to reduce the financial burden of registration. On December 1, 1999, DEA published a Notice of Proposed Rulemaking (64 FR 67216) which proposed a reduction in application fees for registration and reregistration of manufacturers, distributors importers and exporters of list I chemicals. DEA proposed a registration fee of \$326 and re-registration fee of \$171.

Importer Issues

4. Two commentors requested clarification regarding the registration of importers which distribute List I chemicals. These commentors inquired

as to whether multiple registrations are required for importers which distribute. Pursuant to 21 CFR 1309.22(b), "a person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import." Therefore, an importer is not required to obtain multiple registrations to distribute a List I chemical, as long as the only List I chemical distributed is imported material for which the person is a registered importer.

Chemical Mixtures

5. One commentor stated that its red phosphorus is distributed in a thermoplastic encapsulated form and requested that such mixtures be exempted. It is apparent to DEA that such material is considered a "chemical mixture". Chemical mixtures are currently exempt from regulatory provisions of the CSA such as recordkeeping, registration and import/export requirements. On September 16, 1998 (63 FR 49506) DEA proposed regulations pertaining to the regulation of mixtures containing any of 34 listed chemicals. That notice proposed criteria for the determination of whether a chemical mixture shall qualify for automatic exemption from CSA regulatory controls. The NPRM was published to implement CSA requirements that only those chemical mixtures identified by regulation be exempt from applicable regulatory controls. Additionally, the NPRM defined an application process by which manufacturers may apply for an exemption for chemical mixtures that do not qualify for automatic exemption.

Upon publication of this Final Notice, red phosphorus, white phosphorus and hypophosphorous acid (and its salts) shall be subject to CSA chemical regulatory controls. However, chemical mixtures containing these chemicals shall remain exempt until such time as DEA proposes and finalizes regulations for chemical mixtures containing these chemicals. At such time, the manufacturer of chemical mixtures containing these chemicals may either qualify for automatic exemption, or may apply to DEA for exemption after documenting why the mixtures can not be easily used in the manufacture of a controlled substance and the listed chemical can not be readily extracted.

Threshold Issues

6. One commentor suggested that the zero threshold would place an undue burden on the company and its customers in the research community. The commentor stated that the Special

Surveillance List controls should be adequate to prevent diversion.

The Special Surveillance List chemicals are subject to civil penalties for the distribution of a "laboratory supply" with "reckless disregard" for the intended purpose. Red phosphorus and hypophosphorous acid have been on the Special Surveillance List since its initial publication on May 13, 1999.

DEA has determined that these civil penalty provisions alone are not adequate to prevent illicit use of these chemicals and the unregulated sale to the general public continues to be a source of diversion. DEA has concluded that these chemicals should be subject to registration, recordkeeping, reporting and import/export notification requirements of the CSA. As noted in the NPRM, these chemicals are used as catalysts in the illicit synthesis of methamphetamine. As such, the manufacture of methamphetamine requires only small quantities of these chemicals. DEA has evidence that indicates that small transactions are being diverted for illicit use. Therefore, no threshold is being established for domestic and international transactions. Consequently, all transactions involving these chemicals, regardless of size, shall be regulated.

End Users

7. Two commentors requested clarification regarding the term "chemical handler" and the potential applicability of this regulation on end-users which utilize red phosphorus in their production processes. These commentors expressed concerns that an end-user may become subject to regulatory requirements because of distribution of excess material off-site for disposal purposes or because of the transfer of stock from one company location to another.

Under the proposed regulations, distributions of red phosphorus, white phosphorus and/or hypophosphorous acid (and its salts) for the purpose of disposal would be considered regulated transactions subject to all CSA chemical regulatory requirements including registration, recordkeeping and reporting. Additionally, the transfer of stock from one company location to another would require the registration of each location.

However, in order to reduce any burden on end-users of these chemicals, DEA is waiving the registration requirement for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: another location operated by the

same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

This waiver of registration as it pertains to distributions for waste disposal applies only to the registration requirement and all other CSA chemical regulatory controls such as recordkeeping and reporting will still apply. It is likely, however, that the CSA recordkeeping requirements are already being met as part of normal business practice. For phosphorus, compliance with EPA and DOT regulations should document such distributions. Hypophosphorous acid shipments should be documented, but shipments of the hypophosphites may not be. Nonetheless, it is likely that chemical handlers already maintain records of shipments and customers even if shipping papers are not required.

21 U.S.C. 822(d) provides that the Attorney General may, by regulation, waive the requirement of registration of certain manufacturers, distributors or dispensers, if consistent with the public health and safety. DEA is therefore modifying 21 CFR 1309.29 to provide that "The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal".

Large Transactions

8. Two producers of elemental phosphorus requested that large transactions be exempted when shipped in reusable containers with capacities of 2500 or 2800 gallons. These commentors stated that these bulk containers are exclusively rail cars or large isotainers specially designed to enable safe transport.

After unloading, the bulk containers are shipped back to the producers (filled with water for safety reasons due to the remaining phosphorus in the container) for reuse. Therefore, the commentors expressed concerns that their other sites and customers would possibly be subject to recordkeeping and registration requirements due to the return shipments.

The commentors further stated that "safeguards already include recordkeeping, incident reporting, tamper-detection, sealed valves, and use of bulk reusable containers". The commentors believe that "registering and tracking these types of shipments

back and forth with DEA would provide no additional benefit and would impose an undue burden on DEA, our operations and our customers."

DEA agrees that return shipments should not be impacted by this regulation. DEA also recognizes the difficulty in quantifying the residual amounts of red and white phosphorus contained in these rail cars and isotainers. The CSA authorizes DEA, pursuant to 21 U.S.C. 802(39)(A)(iii), to remove certain transactions in listed chemicals from the definition of regulated transaction. Therefore DEA is excluding from the definition of regulated transaction (21 CFR 1310.08(j)), domestic transactions involving red phosphorus and white phosphorus which are return shipments (from customer to producer) in rail cars and isotainers with capacities greater than or equal to 2500 gallons. As such, these return shipment transactions will not require recordkeeping. Additionally, DEA is waiving the registration requirement pursuant to 21 CFR 1309.29(c) for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer in reusable rail cars and isotainers (with capacities greater than or equal to 2500 gallons in a single container).

This exemption and waiver, however, pertain only to these return shipments. Manufacturers shall still be subject to registration, recordkeeping, reporting and other CSA chemical regulatory requirements pertaining to the production and distribution of listed chemicals to their customers. The customers will not be subject to registration or recordkeeping requirements for the return of reusable containers to the producer. However, should these customers re-distribute any of the received material (other than the return of reusable containers to the producer), they shall be subject to all CSA chemical regulatory requirements.

Since the two commentors noted that they already maintain records of these transactions, it is likely that normal business records are adequate to meet CSA recordkeeping requirements. 21 CFR 1310.06(b) provides that normal business records shall be considered adequate, provided they contain information described in § 1310.06(a) and are readily retrievable from other business records. These records can be those already required by other Federal, state and local regulatory agencies.

Because the above exemption was not discussed in the NPRM published on September 25, 2000, DEA requests

public comment with respect to this exemption.

Interim Rule With Request for Comments

This final rule will establish on an interim basis, an exclusion from the definition of regulated transaction for domestic transactions involving red phosphorus and white phosphorus which are return shipments (from customer to producer) in rail cars and isotainers with capacities greater than or equal to 2500 gallons. This final rule will also establish, on an interim basis, a waiver from the registration requirement for such activity. Additionally, this final rule will establish on an interim basis, a waiver from the registration requirement for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

DEA is soliciting comments only on those portions of this Final Rule pertaining to these specific issues. DEA will allow 30 days for persons to comment on the exclusion and waivers. DEA will accept comments until November 16, 2001. After the close of this comment period, DEA will publish a final rule in the **Federal Register** to inform interested parties if changes are needed or if the exclusion and waivers will be adopted as stated.

DEA became aware of these issues via comments received in response to the September 25, 2000 NPRM (65 FR 57577). Since that Notice did not propose the exclusion and waivers, the general public did not have an opportunity to comment on these issues.

DEA has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553 et seq.) (APA) to forgo a Notice of Proposed Rulemaking for the exclusion and waivers. The APA states that an agency may forgo a NPRM if it is impracticable, unnecessary, or contrary to the public interest. To avoid unnecessary or temporary burdens on affected companies during the pendency of proceedings in this matter, DEA will include as part of this rulemaking an interim rule, with request for comments regarding these issues.

Certifications

This regulation is not considered to have an impact upon a substantial number of firms, given the limited distribution of these three chemicals.

The Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It will not have a significant economic impact on a substantial number of small business entities.

The Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

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.

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more 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.

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

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

List of Subjects

21 CFR Part 1309

Administrative practice and procedure, Drug traffic control, List I

and List II chemicals, Reporting and recordkeeping requirements.

21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1309 and 1310 are amended as follows:

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.29 is revised to read as follows:

1309.29 Waiver of registration requirement for certain activities.

(a) The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are restricted to the distribution of below-threshold quantities of a drug product that contains a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter to an individual for legitimate medical use.

(b) The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

(c) The requirement of registration is waived for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer, in reusable rail cars and isotainers (with capacities greater than or equal to 2500 gallons in a single container).

(d) If any person exempted under paragraph (b) or (c) of this section also engages in the distribution, importation or exportation of a List I chemical, other than as described in such paragraph, the person shall obtain a registration for such activities, as required by § 1309.21 of this part.

(e) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a waiver granted under paragraph (b) or (c) of this section pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and 1309.51 through 1309.57 of this part.

(f) Any person exempted from the registration requirement under this section shall comply with the security

requirements set forth in §§ 1309.71–1309.73 of this part and the recordkeeping and reporting requirements set forth under parts 1310 and 1313 of this chapter.

PART 1310—[AMENDED]

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

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by adding new paragraphs (a)(25) through (27) to read as follows:

§ 1310.02 Substances covered.

* * *	
(a) * * *	
(25) Red phosphorus	6795
(26) White phosphorus (Other names: Yellow Phosphorus)	6796
(27) Hypophosphorous acid and its salts (Including ammonium hypophosphate, calcium hypophosphate, iron hypophosphate, potassium hypophosphate, manganese hypophosphate, magnesium hypophosphate and sodium hypophosphate)	6797

3. Section 1310.04 is amended by adding new paragraphs (g)(1)(ii) through (g)(1)(iv) to read as follows:

§ 1310.04 Maintenance of records.

* * *	
(g) * * *	
(1) * *	
(ii) Red phosphorus	
(iii) White phosphorus (Other names: Yellow Phosphorus)	
(iv) Hypophosphorous acid and its salts	

4. Section 1310.08 is amended by adding a new paragraph (j) to read as follows:

§ 1310.08 Excluded transactions.

(j) Domestic return shipments of reusable containers from customer to producer containing residual red phosphorus or white phosphorus in isotainers and rail cars with capacities greater than or equal to 2500 gallons (in a single container).

5. Section 1310.09 is amended by adding a new paragraph (d) to read as follows:

§ 1310.09 Temporary exemption from registration.

(d) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export the List I chemicals red phosphorus, white phosphorus, and hypophosphorous acid (and its salts), is

temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before December 17, 2001. 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.

Dated: October 5, 2001.

Asa Hutchinson,
Administrator.

[FR Doc. 01–26013 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 599

[Docket No. FR–4663–C–05]

RIN 2506–AC09

Designation of Forty Renewal Communities; Technical Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule; technical correction.

SUMMARY: On July 9, 2001, HUD published an interim rule to govern the designation of Renewal Communities nominated by States and local governments. This document corrects an error in the interim rule by removing arson from the list of offenses counted in determining the Crime Index and the Local Crime Index.

DATES: *Effective Date:* August 8, 2001.

FOR FURTHER INFORMATION CONTACT: John Haines, Renewal Community Initiative, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7130, Washington, DC 20410, (202) 708–6339. Persons with hearing or speech disabilities may call (800) 877–8339 (the Federal Information Relay Service-TTY).

SUPPLEMENTARY INFORMATION:

On July 9, 2001 (66 FR 35850), HUD published an interim rule for the designation of Renewal Communities (RCs) and Round III urban Empowerment Zones (EZs). The preamble, at 66 FR 35853, cited the Crime Index (CI) of the FBI's Uniform Crime Reporting (UCR) as including the offense of arson. The rule, in § 599.107(a)(3) at 66 FR 35858, includes

arson in the list of offenses that must be included when determining the Local Crime Index (LCI) in a nominated area for purposes of comparing the LCI to the CI.

Although the offense of arson is included as part of the UCR, it is not included in the CI determination because the reporting for arson is not as consistent as for other offenses. The references to arson in the interim rule are, therefore, being removed. In addition, a correction to make conforming changes to the August 7, 2001 (66 FR 41432) Notice Inviting Applications for Designation of Forty Renewal Communities is published elsewhere in this issue of the **Federal Register**.

Accordingly, FR Doc. 01–17011, Designation of Round III Urban Empowerment Zones and Renewal Communities, (FR–4663–I–01), published in the **Federal Register** on July 9, 2001 (66 FR 35850), is corrected as follows:

1. On page 35853, second column, the second complete sentence is revised to read as follows: “The offenses included are the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, and motor vehicle theft.”

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§ 599.107 [Corrected]

2. On page 35858, second column, the last complete sentence of § 599.107(a)(3) is revised to read as follows: “The offenses used in determining the LCI are the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, and motor vehicle theft.”

Dated: October 10, 2001.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8966]

RIN 1545–AT47

Effect of the Family and Medical Leave Act on the Operation of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.