

Note.—This appendix will not be published in the Code of Federal Regulations.

Appendix

Alternative Dispute Resolution

Docket No. RM91-12-000

Commenters

American Gas Distributors (AGD)
 American Public Power Association
 Association of Oil Pipelines (AOPL)
 Colorado Interstate Gas Company and ANR Pipeline Company (CIG and ANR)
 Colorado River Energy Distributors Association (CREDA)
 Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia Gas)
 Consumers Power Company (Consumers)
 Edison Electric Institute (EEI)
 Electric Generation Association (Electric Generation)
 McCormack Institute of Public Affairs
 Missouri Public Service Commission (Missouri PSC)
 Natural Gas Clearinghouse
 Natural Gas Pipeline Company of America (Natural Gas Pipeline)
 Natural Gas Supply Association (Natural Gas Supply)
 New England Power Service
 Northeast Energy Associates and North Jersey Energy Associates (Northeast and North Jersey)
 Northern Distributors Group (Northern Distributors)
 Northwest Industrial Gas Users (Northwest Users)
 Pacific Gas and Electric Company (PG&E)
 Process Gas Consumers Group, American Iron and Steel Institute, and Georgia Industrial Group (Industrials)
 Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company and Algonquin Gas Transmission Company (PEC Pipeline Group)
 Transcontinental Gas Pipe Line Corporation (Transco)
 U.S. Department of Commerce (Commerce)
 U.S. Department of the Interior (Interior)
 Williams Natural Gas Company and Northwest Pipeline Company (Williams)
 Wisconsin Municipal Group

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA No. 128F]

RIN 1117-AA26

Records, Reports, and Exports of Listed Chemicals

AGENCY: Drug Enforcement Administration (DES), Justice.

ACTION: Final rule.

SUMMARY: This final rule adds methyl isobutyl ketone (MIBK) as a List II

Chemical under the Controlled Substances Act (CSA). This action is based on substantial evidence that MIBK is increasingly being used as a solvent in the production of cocaine hydrochloride during the conversion of cocaine base to cocaine hydrochloride. The recent steps by the Government of Columbia (GOC) to control MIBK further support this action.

This action will only affect specific types of transactions which are greater than 500 gallons or 1523 kilograms of MIBK destined for countries in the Western Hemisphere (with the exception of transactions destined for Canada). These transactions include (1) export transactions; (2) international transactions in which a U.S. broker or trader participates; and (3) transshipments through the U.S.

EFFECTIVE DATE: May 19, 1995.

FOR FURTHER INFORMATION CONTACT:

Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307-7183.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA), specifically 21 U.S.C. section 802, provides the Attorney General with the authority to specify by regulation, additional precursor and essential chemicals as "listed chemicals" if they are used in the illicit manufacture of controlled substances. Section 802(39) also provides the Attorney General with authority to establish a threshold amount for "listed chemicals" if the Attorney General so elects. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 and redelegated to the Deputy Administrator under 28 CFR 0.104 (Subpart R) Appendix Sec. 12.

On February 28, 1995 the Deputy Administrator of the Drug Enforcement Administration (DEA) published a Notice of Proposed Rulemaking (60 FR 10814). This notice proposed the addition of methyl isobutyl ketone (MIBK) as a List II Chemical under the Controlled Substances Act (CSA). Interested parties were given 30 days in which to submit comments and objections.

Only one comment was received in response to the Notice of Proposed Rulemaking. This comment requested further clarification of the meaning of the term "Western Hemisphere". Webster's II New Riverside University Dictionary defines the term "Western Hemisphere" to mean, "The half of the earth that includes North and South America, the surrounding waters, and all neighboring islands". For purposes

of this rulemaking, this is the definition that the DEA is adopting.

While methyl ethyl ketone (MEK) has become the solvent of choice in the processing of cocaine base to cocaine hydrochloride, recent regulatory and enforcement efforts in Latin America have resulted in a reduced availability of MEK. Information available to DEA indicates that in response to this shortfall of MEK, cocaine laboratory operators have moved to the utilization of MIBK for the processing of cocaine base to cocaine hydrochloride. Due to information regarding the use of MIBK for cocaine processing, the dramatic increase in MIBK importation, and the importation of MIBK by some firms that the Government of Colombia (GOC) considers suspect, the GOC has recently taken steps to control the sale and distribution of MIBK.

The United States is a major producer of MIBK and exports MIBK to Colombia and other countries within Latin America. In light of the above, the DEA has determined that the control of MIBK as a List II Chemical under the CSA is warranted. Since the illicit use of MIBK for cocaine processing occurs in Latin America, MIBK shipments exported from the U.S., shipments transshipped or transferred through the U.S., and international transactions in which a U.S. broker or trader participates, shall be considered regulated transactions if destined for any country in the Western Hemisphere (with the exception of transactions destined for Canada) 21 U.S.C. section 802(39)(A)(iii). In addition, a threshold similar to that of MEK shall be established for MIBK. A threshold of 500 gallons (by volume) or 1523 kilograms (by weight) shall be established for MIBK. Therefore, this action will only effect specific types of transactions which are greater than 500 gallons or 1523 kilograms of MIBK destined for designated countries. These transactions include (1) export transactions; (2) international transactions in which a U.S. broker or trader participates; and (3) transshipments through the U.S. Import transactions of MIBK into the U.S. (not destined for transshipment or transfer to designated countries), and domestic transactions of MIBK are excluded from the definitions of regulated transactions contained in 21 CFR 1310.01(f) and 1313.02(d).

The Deputy Administrator hereby certifies that this rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. A review of maritime shipments of MIBK reveals that during a two year period, there were less than

100 above-threshold export transactions destined for designated countries. This rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

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

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 a new paragraph (b)(10) to read as follows:

§ 1310.02 Substances Covered.

* * * * *

(b) * * *

(10) Methyl Isobutyl Ketone (MIBK)

* * * * *

3. Section 1310.04 is amended by adding new paragraph (f)(2)(v) to read as follows:

§ 1310.04 Maintenance of Records.

* * * * *

(f) * * *

(2) * * *

(v) Export and International Transactions to Designated Countries, and Importations for Transshipment or Transfer to Designated Countries

Chemical	Threshold by volume	Threshold by weight
(A) Methyl Isobutyl Ketone (MIBK).	500 gallons	1523 kilograms.
(B) Reserved.		

4. Section 1310.08 is amended by adding new paragraphs (c), (d) and (e) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(c) Domestic transactions of Methyl Isobutyl Ketone (MIBK).

(d) Import transactions of Methyl Isobutyl Ketone (MIBK) destined for the United States.

(e) Export transactions, international transactions, and import transactions for transshipment or transfer of Methyl Isobutyl Ketone (MIBK) destined for

Canada or any country outside of the Western Hemisphere.

Dated: April 12, 1995.

Stephen H. Greene,

Deputy Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ-34-1-6823; FRL-5193-4]

Clean Air Act Section 182(f) NO_x Exemption Petition; Phoenix Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the approval of a petition submitted by the Arizona Department of Environmental Quality (ADEQ) requesting that EPA grant an exemption for the Phoenix ozone nonattainment area (Phoenix area) from the requirement to implement oxides of nitrogen (NO_x) reasonably available control technology (RACT). EPA published a proposed action to approve the Phoenix area NO_x exemption in the **Federal Register** on November 1, 1994. In accordance with the requirements of the Clean Air Act, as amended in 1990 (the Act or CAA), the EPA has determined that additional NO_x reductions from major stationary sources in the Phoenix area would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. The approval of this action exempts the Phoenix area from implementing the NO_x requirements for RACT, new source review (NSR), and the applicable general and transportation conformity and inspection and maintenance (I/M) requirements of the CAA. The EPA is finalizing approval of this action under provisions of the CAA regarding plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on April 11, 1995.

ADDRESSES: Copies of the petition and EPA's evaluation report is available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted petition is available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460
 Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012
 Maricopa County Air Pollution Control District, 2406 South 24th Street, Suite E214, Phoenix, Arizona 85034

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1202.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1994, EPA proposed to approve the Phoenix area NO_x exemption petition, submitted by the ADEQ on April 13, 1994. 59 FR 54540. The exemption petition is based on urban airshed modeling (UAM) and makes a demonstration that additional NO_x reductions in the Phoenix area would not contribute to attainment of the NAAQS for ozone. A detailed discussion of the background concerning the NO_x requirements and the submitted petition is provided in the notice of proposed rulemaking (NPRM) cited above.

EPA has evaluated the exemption petition for consistency with the requirements of the CAA, EPA regulations, and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the petition satisfies the applicable EPA requirements and is exempting the Phoenix area from implementing the NO_x requirements for RACT, NSR¹, and the applicable general and transportation conformity and I/M requirements² of the CAA. A detailed discussion of the petition and EPA's evaluation have been provided in the NPRM and in the technical support document (TSD), dated October 1994. A detailed discussion of the scope of the

¹ The section 182(f) exemption provisions center on the effect on ozone concentrations due to NO_x emission reductions. In the case of new or modified sources, even after the application of on-site controls from NSR programs, the source will result in increases of NO_x emissions. Therefore, the "substantial NO_x reductions" analysis used to demonstrate that NO_x reductions do not contribute to attainment should reflect a zero emissions increase from new or modified stationary sources.

² "Scope of Nitrogen Oxides (NO_x) Exemptions," from G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch (MD-15), to the Air Branch Chiefs, January 12, 1995. "I/M Requirements in NO_x RACT Exempt Areas", from Mary T. Smith, Acting Director, Office of Mobile Sources, to the Air Division Directors, October 14, 1994.