

Regulatory Certifications*Administrative Procedure Act*

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. The Drug Enforcement Administration finds good cause to exempt this rulemaking from public notice and comment as such notice and comment would be unnecessary and impracticable. This final rule merely corrects the inadvertent removal of 21 CFR 1310.04(g) from the Code of Federal Regulations. Further, DEA finds good cause to make this rulemaking effective immediately upon publication, as delaying its effective date could cause confusion within the regulated industry regarding thresholds for the List I chemicals ephedrine, red phosphorus, white phosphorus and hypophosphorous acid (and its salts).

Congressional Review Act

The Drug Enforcement Administration has determined that this action is a rule relating to agency procedure and practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This final rule merely corrects the inadvertent removal of a paragraph in title 21, Code of Federal Regulations, part 1310.

Executive Order 12866

The Deputy Assistant 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 regulatory action. Therefore, this action has not been reviewed by the Office of Management and Budget.

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.

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 \$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.

Small Business Regulatory Enforcement Fairness Act of 1996

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.

List of Subjects in 21 CFR Part 1310

Drug traffic control, List I and II chemicals, Reporting and recordkeeping requirements.

For the 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 1310.04 is amended by:

- a. Removing paragraph (f)(1)(i)(C), and redesignating existing paragraphs (f)(1)(i)(D) through (f)(1)(i)(W) as (f)(1)(i)(C) through (f)(1)(i)(V);
- b. Revising paragraph (f)(1)(ii) introductory text; and
- c. Adding paragraph (g).

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) * * *

(ii) Notwithstanding the thresholds established in paragraphs (f)(1)(i) and (g) of this section, the following thresholds will apply for the following List I chemicals that are contained in drug products that are regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter (thresholds for retail distributors and distributors required to report under § 1310.03(c) of this part are for a single transaction; the cumulative threshold provision does not apply. All other distributions are subject to the cumulative threshold provision.):

* * * * *

(g) For listed chemicals for which no thresholds have been established, the size of the transaction is not a factor in determining whether the transaction meets the definition of a regulated transaction as set forth in § 1300.02(b)(28) of this chapter. All such transactions, regardless of size, are subject to recordkeeping and reporting requirements as set forth in this part and notification provisions as set forth in part 1313 of this chapter.

(1) Listed chemicals for which no thresholds have been established:

- (i) Ephedrine, its salts, optical isomers and salts of optical isomers
- (ii) Red phosphorus
- (iii) White phosphorus (Other names: Yellow Phosphorus)
- (iv) Hypophosphorous acid and its salts

(2) [Reserved]

Dated: February 26, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03-5528 Filed 3-10-03; 8:45 am]

BILLING CODE 4410-09-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[IN147-1a; FRL-7464-6]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the removal of the State rule controlling fluoride emission limitations from existing primary aluminum plants as a revision to the plan for control of fluoride emissions from existing primary aluminum plants (plan), as requested by the State of Indiana on

October 17, 2002, and January 22, 2003. Indiana has replaced this rule with another regulation which incorporates by reference current Federal requirements into the Indiana Administrative Code. The rule being removed applies to a single source, Aluminum Company of America (ALCOA), located in Warrick County. Because ALCOA remains subject to more stringent Federal requirements, EPA approval should not result in an adverse impact on air quality.

DATES: This direct final rule is effective on May 12, 2003, without further notice unless EPA receives adverse written comments by April 10, 2003. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the plan revision request is available for inspection at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph Cano at (312) 886-6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR-18J), EPA, Region 5, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" is used we mean EPA.

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I. What Is the background for This Action?

On October 17, 2002, Lori F. Kaplan, Commissioner of the Indiana Department of Environmental Management, submitted to EPA a requested amendment to the Indiana plan. Indiana's request was clarified in a January 22, 2003, letter to EPA. This amendment consisted of revisions to title 326 of the Indiana Administrative Code (326 IAC) in which the Indiana Air Pollution Control Board repealed 326

IAC 11-5, regulating fluoride emissions from existing aluminum plants. Indiana repealed this rule on June 5, 2002, and filed that action with the Secretary of State on August 28, 2002. It became effective on September 27, 2002, and was published in the *Indiana Register* on October 1, 2002 (26 IR 10).

The State originally adopted the rule regulating fluoride emissions from aluminum plants in 1981 as a standard of performance for existing sources under section 111(d) of the Clean Air Act (Act). Indiana submitted the rule to EPA for approval on January 21, 1981. EPA approved the State submittal as satisfying section 111(d) requirements and incorporated it into the Plan on November 27, 1981 (46 FR 57893).

On October 7, 1997, EPA adopted a more stringent rule controlling emissions from primary aluminum plants, under its National Emission Standards for Hazardous Air Pollutants (NESHAP) program. See 40 CFR part 63, subpart LL. (62 FR 52384) The State adopted these newer, more stringent NESHAP requirements using Incorporation by Reference procedures on May 21, 2002. See 326 IAC 20-24. Because some of the control and monitoring requirements in 326 IAC 11-5 are different from those in the Federal NESHAP rules, the State repealed 326 IAC 11-5 on June 5, 2002. In a January 22, 2003, letter, the State clarified that it intended to replace 326 IAC 11-5 the control strategy in the original plan with the NESHAP requirements it incorporated by reference in the IAC as 326 IAC 20-24.

II. What Changes Are Being Made to the State Rule?

Rule 326 IAC 11-5 is being removed from the Indiana plan. As a result, ALCOA, the only source which had been subject to this State rule, will continue to be subject to 326 IAC 20-24, which incorporates the Federal NESHAP into the Indiana Administrative Code. On January 22, 2003, the State clarified its intent to replace rule 326 IAC 11-5 as the control strategy in its 111(d) plan for controlling fluoride emissions from existing aluminum plants with the NESHAP for controlling fluoride emissions from primary aluminum plants which was promulgated by EPA on October 7, 1987 (62 FR 52384).

III. What Is EPA's Rulemaking Action?

EPA is approving the removal of 326 IAC 11-5 from the Indiana plan and the replacement of this Rule as the emissions control strategy with the Federal NESHAP promulgated October 7, 1997 (62 FR 52384). Because the only

subject source remains obligated to comply with more stringent NESHAPS requirements, EPA approval of this change should not result in an adverse impact on air quality.

EPA is publishing this action without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comments.

However, in a separate document in this *Federal Register* publication, EPA is proposing to approve the State's Plan revision request should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by April 10, 2003. Should EPA receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on May 12, 2003.

IV. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state regulations as meeting Federal requirements and imposes no additional requirements beyond those imposed by state regulations. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045 Protection of Children from Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a plan submission, to use VCS in place of a plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 12, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fluoride, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 27, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 62.3625 is amended by adding paragraph (d) to read as follows:

§ 62.3625 Identification of Plan.

* * * * *

(d) On October 17, 2002, and January 22, 2003, the State notified EPA that it is revising the control strategy for this plan. Rule 326 IAC 11–5 is removed as the control strategy for this plan and the Federal NESHAP for controlling fluoride emissions from primary aluminum reduction plants promulgated on October 7, 1997 (62 FR 52384), and codified at 40 CFR part 63, subpart LL is the revised control strategy for this plan.

[FR Doc. 03–5741 Filed 3–10–03; 8:45 am]

BILLING CODE 6560–50–P