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You can also get a copy of the draft regulatory language by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number of this rulemaking.

Issued in Washington, DC on February 23, 2005.

George C. Nield,

Deputy Associate Administrator for Commercial Space Transportation.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA-254P]

RIN 1117-AA90

Control of Sodium Permanganate as a List II Chemical

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Controlled Substances Act (CSA) provides the Attorney General with the authority to specify, by regulation, additional chemicals as "List II" chemicals if they are used in the manufacture of a controlled substance in violation of the CSA. The Drug Enforcement Administration (DEA) is proposing the addition of sodium permanganate as a List II chemical because of its direct substitutability for potassium permanganate (a List II chemical) in the illicit production of cocaine.

As a List II chemical, handlers of sodium permanganate would be subject to CSA chemical regulatory controls including recordkeeping, reporting, and import/export requirements. DEA has determined that these controls are necessary to prevent the diversion of this chemical to cocaine laboratories.

DEA is also proposing that a cumulative threshold of 55 kilograms and 500 kilograms be established (respectively) for domestic and international transactions. As such, all transactions which meet or exceed these quantities (in a calendar month) shall be considered regulated transactions, subject to recordkeeping, reporting and/or import/export notification requirements. Additionally DEA is proposing that sodium permanganate

chemical mixtures having less than or equal to 15 percent sodium permanganate shall qualify for automatic exemption from CSA chemical regulatory controls pursuant to 21 CFR part 1310.

All handlers of the List II chemical sodium permanganate would also be subject to the applicable civil and criminal penalty provisions found in 21 U.S.C. 841, 842, 843, 959 and 960.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before May 2, 2005.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-254" on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCD. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/CCD, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to dea.diversion.policy@usdoj.gov. Comments may also be sent electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulations.gov> Web site. DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud Ph.D., 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) and its implementing regulations, specifically 21 U.S.C. 802(35) and 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, additional chemicals as "List II" chemicals if they are used in the manufacture of a controlled substance in violation of the CSA. 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 section 12.

This Notice of Proposed Rulemaking (NPRM) proposes the addition of sodium permanganate as a List II chemical. Additionally, this NPRM proposes that a threshold of 55 kilograms and 500 kilograms be established (respectively) for domestic and international transactions.

DEA is also proposing that chemical mixtures (containing sodium permanganate) having less than or equal to 15 percent sodium permanganate shall qualify for automatic exemption from CSA chemical regulatory controls pursuant to 21 CFR part 1310. Since DEA recognizes that the concentration limit exemption criteria cannot identify all 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 a Final Rule published in the **Federal Register** May 1, 2003 (68 FR 23195). 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)(v)). An application may be for a single or a multiple number of formulations.

Sodium Permanganate Industry and Legitimate Uses

Sodium permanganate is an inorganic oxidant that is a direct substitute for potassium permanganate. Due to its high solubility in water, sodium permanganate has distinct advantages over potassium permanganate in many industrial applications. It is becoming widely used for industrial purposes, including (1) printed circuit board production, (2) pharmaceutical and chemical synthesis, (3) soil and groundwater remediation, (4) metal cleaning formulations, (5) acid mine drainage and (6) hydrogen sulfide odor control.

DEA has identified only one domestic producer of sodium permanganate. However, sodium permanganate is also imported into the United States and there are at least three other major suppliers of sodium permanganate in the United States.

The U.S. firm that manufactures sodium permanganate distributes it through 15-20 major authorized distributors and more than 100 branch distributors. This U.S. supplier has advised DEA that it is aware of "one

[sodium permanganate] manufacturer in Germany, more than one manufacturer in China and at least nine suppliers in other countries.”

Reason for This Control Action

Sodium permanganate is directly substitutable for potassium permanganate, an important List II chemical used illicitly in the production of cocaine. Potassium permanganate is widely used as an oxidizing agent for removing impurities from coca base in the illicit production of cocaine. Potassium permanganate is utilized because it produces an aesthetically pleasing, white, crystalline form of cocaine hydrochloride, which is easily marketed.

Because of its importance in cocaine production, potassium permanganate has been the target of international cooperative efforts to monitor potassium permanganate shipments and prevent its diversion. This effort remains an international priority involving the competent authorities of 22 countries.

Recently, the world's largest producer of potassium permanganate (a U.S. company) informed DEA of its recent conversion of production processes away from potassium permanganate and toward the increased production and distribution of sodium permanganate. Because of sodium permanganate's direct substitutability for potassium permanganate, this company has agreed with DEA concerns regarding the potential illicit use of sodium permanganate as a direct substitute for potassium permanganate in cocaine processing. This producer advised DEA that it would welcome the control of sodium permanganate as a listed chemical.

Even though production of sodium permanganate has historically been limited, sodium permanganate has been seized by law enforcement at illicit cocaine laboratories in Latin America. As reported in the 2001 and 2002 Statistical Summary on Drugs compiled by the Organization of American States (OAS), Inter-American Drug Abuse Control Commission (CICAD), the Government of Colombia (as reported by the Colombian Ministerio de Justicia y del Derecho, Direccion Nacional de Estupefacientes) reported the seizure of 1,400 kilograms of sodium permanganate in 1997, 236 kilograms in 1998 and 404 kilograms in 1999.

Because of its direct substitutability for potassium permanganate and increased production, DEA sees the urgent need to regulate sodium permanganate as a List II chemical to prevent its diversion to cocaine laboratories. Hence, this NPRM

proposes that sodium permanganate become subject to the same CSA regulatory controls which have been put forth for potassium permanganate. As such, sodium permanganate would become subject to List II chemical controls, including recordkeeping, reporting, and import/export requirements as specified in 21 CFR parts 1310 and 1313.

Regulatory Controls That Would Apply to This Chemical

DEA is proposing that sodium permanganate become subject to the same chemical controls as apply to potassium permanganate, due to its direct substitutability in cocaine processing. As a List II chemical, sodium permanganate would 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. As a List II chemical, manufacturers, distributors, importers and exporters of sodium permanganate will not be required to register with DEA pursuant to the provisions of 21 CFR part 1309.

Handlers of this chemical would be required to maintain records and meet CSA import/export notification requirements for “regulated transactions” involving sodium permanganate. 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.

DEA is proposing the establishment of a threshold of 55 kilograms for domestic transactions and 500 kilograms for international transactions. Consequently, all transactions which meet or exceed these threshold quantities would be considered regulated transactions and be subject to recordkeeping, reporting and import/export notification requirements of the CSA.

Regulatory Requirements for Persons Handling Regulated Transactions of Sodium Permanganate

Records and Reports. The CSA (21 U.S.C. 830) requires certain records to be kept and reports to be made

involving 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 regulated transaction involving a List II chemical. Only a distribution, receipt, sale, importation, or exportation of a regulated mixture at or above the established threshold (e.g. 55 kilograms for domestic transactions and 500 kilograms for international transactions) is a regulated transaction (21 CFR 1300.02(b)(28)).

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. 21 CFR 1310.05 requires that each regulated person shall report to DEA any regulated transaction involving an extraordinary quantity, an uncommon method of payment or delivery, or any other circumstance that causes the regulated person to believe that the listed chemical will be used in violation of the CSA.

Imports/Exports. All import/exports and brokered transactions of regulated mixtures shall comply with the CSA (21 U.S.C. 957 and 971). Regulations for importation and exportation of listed chemicals are described in 21 CFR part 1313.

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 listed chemical 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.

Specific Requirements That Will Apply to Regulated Chemical Mixtures Containing Sodium Permanganate

Upon publication of a Final Rule, a chemical mixture that is regulated because it contains greater than 15 percent sodium permanganate will be treated as a List II chemical. Transactions that meet or exceed the cumulative monthly threshold of 55 kilograms for domestic transactions and 500 kilograms for international

transactions shall be regulated transactions.

The regulatory requirements for regulated chemical mixtures containing List II chemicals are the same as for regulated chemical mixtures containing List I chemicals, except that registration requirements do not apply. Therefore, the same requirements for records and reports, imports/exports (except that pertaining to 21 U.S.C. 957), and administrative inspection, as outlined above, apply to handlers of List II regulated chemical mixtures.

Persons who submit an application for exemption (21 CFR 1310.13) and whose application is pending or subsequently denied by DEA would be required to comply with all chemical control requirements, including recordkeeping and reporting, effective 30 days from date of publication of the final rulemaking. Therefore, all transactions of the chemical mixture would be regulated, if above threshold, while an application for exemption is pending or awaiting correction. This is necessary because not regulating these transactions could result in increased diversion of chemicals desirable to cocaine traffickers.

Potential Impact of Regulation Upon Industry

In an effort to better estimate the potential impact of this proposed action, DEA conducted an analysis of various data sources relating to the manufacture, distribution, and use of the permanganates. This included an analysis of current chemical producers and marketing directories (to identify companies listing themselves as sources of these chemicals).

As previously stated in this NPRM, the DEA has identified only a limited number of companies which distribute sodium permanganate which has been either domestically produced or imported. While sodium permanganate has industrial uses, DEA has not been able to identify any "household" uses for this chemical. Therefore, the number of firms that are likely to be affected by this proposed regulation is relatively small.

This proposed regulation is not considered to have an impact upon a substantial number of firms, given the limited distribution of this chemical. Additionally, it is likely that the CSA recordkeeping requirements are already being met as part of normal business practice. Since sodium permanganate is being proposed as a List II chemical there is no registration requirement. Additionally, DEA is proposing a cumulative threshold of 55 kilograms for domestic transactions and 500

kilograms for international transactions. Therefore, small transactions involving research quantities of sodium permanganate will not be subject to regulatory requirements.

Invitation for Input Regarding the Legitimate Uses for These Chemicals

This NPRM solicits input regarding: (1) The nature of the legitimate sodium permanganate industry; (2) the legitimate uses of sodium permanganate at all levels of distribution (including industrial uses and use by individual end-users at the retail level of distribution); (3) the potential impact such regulatory controls may have on legitimate industry (particularly with respect to the impact on small businesses); (4) the potential number of individuals/firms which may be affected by increased regulatory requirements; and (5) any other information on the manner of manufacturing, distribution, consumption, storage, disposal, and uses of sodium permanganate by industry and others. Comments must be submitted on or before May 2, 2005.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy 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. As noted previously, this NPRM is not considered to have an impact upon a substantial number of firms, given the limited distribution of this chemical. Further, this impact is being limited by the fact that DEA is proposing to list sodium permanganate as a List II chemical, rather than the more stringent requirements of a List I chemical. Additionally, it is likely that the CSA recordkeeping requirements are already being met as part of normal business practice. The cumulative threshold of 55 kilograms for domestic transactions and 500 kilograms for international transactions proposed here would remove from regulatory control small transactions involving research quantities of sodium permanganate.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). It has been determined that this is a "significant regulatory action". Therefore, this action has been reviewed

by the Office of Management and Budget. DEA has identified only one United States firm which manufactures sodium permanganate. This firm supports control of sodium permanganate as a List II chemical.

Paperwork Reduction Act

This NPRM proposes the addition of sodium permanganate as a List II chemical under the Controlled Substances Act. As a List II chemical, there is no requirement of registration to handle this chemical. Further, as most persons who handle this product are end-users and, as such, are not required to maintain records or file reports, there is no impact on these persons.

Handlers of sodium permanganate that distribute above threshold quantities, are required to maintain records. Normal business records are deemed adequate if they contain the information required in 21 CFR 1310.06. As normal business records meet DEA's regulatory requirements, the maintenance of these records does not fall under the parameters of the Paperwork Reduction Act. Further, DEA is proposing that persons importing and exporting this List II chemical in quantities of greater than 500 kilograms, cumulatively, per month, must provide DEA with advance notification of these transactions. As DEA does not have any information on which to base an estimate of the impact of this new reporting requirement for persons importing or exporting sodium permanganate in quantities greater than 500 kilograms, cumulatively, per month, DEA will adjust the burden related to this information collection (OMB control number 1117-0023 "Import/Export Declaration: Precursor and Essential Chemicals") upon its renewal.

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 \$114,000,000 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 List II chemicals, Reporting and recordkeeping requirements.

For reasons set out above, it is proposed that 21 CFR part 1310 be amended as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES [AMENDED]

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

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

2. Section 1310.02 is proposed to be amended by adding a new paragraph (b)(12) to read as follows:

§ 1310.02 Substances covered.

(b) * * * (12) Sodium Permanganate 6588

3. Section 1310.04 is proposed to be amended by adding new paragraphs (f)(2)(i)(H) and (f)(2)(ii)(J) to read as follows:

§ 1310.04 Maintenance of records.

(f) * * * (2) * * *

(i) * * * (H) Sodium permanganate. N/A ... 500 kilograms.

(ii) * * * (J) Sodium permanganate. N/A ... 55 kilograms.

4. Section 1310.12 is proposed to be amended by revising paragraph (c) introductory text and adding to the table in paragraph(c) an entry in alphabetical order for "Sodium Permanganate" to read as follows:

§ 1310.12 Exempt chemical mixtures.

(c) Mixtures containing a listed chemical in concentrations equal to or less than those specified in the "Table of Concentration Limits" are designated as exempt chemical mixtures for the purpose set forth in this section. The concentration is determined for liquid-liquid mixtures by using the volume or weight and for mixtures containing solids or gases by using the unit of weight.

TABLE OF CONCENTRATION LIMITS

Table with 4 columns: Chemical Name, DEA chemical code number, Concentration (percent), and Special conditions. Includes rows for List I Chemicals, List II Chemicals, and Sodium Permanganate.

Dated: December 30, 2004. Michele M. Leonhart, Deputy Administrator. [FR Doc. 05-3913 Filed 2-28-05; 8:45 am] BILLING CODE 4410-09-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD13-05-001]

RIN 1625-AA01

Anacortes General Anchorage and Cap Sante and Hat Island Tug and Barge General Anchorages, Anacortes, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish three general anchorages and two tug and barge general anchorages in the vicinity of Anacortes, Washington. These anchorages would reduce the risk of collisions, provide a more orderly movement of tanker traffic in and out of near by oil refineries, and keep the approaches to Guemes Channel open to transiting traffic while providing ample room for barge operations.

DATES: Comments and related material must reach the Coast Guard on or before May 2, 2005.

ADDRESSES: You may mail comments and related material to Commanding Officer (wwm), Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134. Marine Safety Office Puget Sound maintains the public docket [CGD13-05-001] for this rulemaking. Comments and material received from the public, as well as

documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Puget Sound between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Alger, Operations Director, Vessel Traffic Service Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217-6040.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13-05-001), indicate the specific section of this document to which each comment