

40 CFR Part 799

[OPTS-42030E; FPL-3180-B]

Mesityl Oxide; Clarification of Final Test Rule**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final Rule; Notice of clarification of final test rule.

SUMMARY: In the Federal Register of December 20, 1985, EPA issued a final Phase I test rule establishing testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of mesityl oxide (MO; CAS No. 141-79-7). At that time, EPA specified that those who manufacture or process mesityl oxide are subject to the rule. The Agency did not choose to exclude those who manufacture MO as a byproduct from the rule. Since that time, the Agency has been informed that those who use or process acetone under acidic conditions may manufacture MO as a byproduct. This document clarifies the rule by restating that those who manufacture MO as a byproduct are subject to this rule and must either submit a notice of intent to test or an exemption application in accordance with the requirements of 40 CFR 790.45.

EFFECTIVE DATE: The effective date of this rule was February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: This notice clarifies who is subject to the test rule for MO.

I. Background

The Phase I final test rule for MO specifies that all persons who manufacture or process or intend to manufacture or process MO from the effective date of the rule (February 3, 1986) to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, study plans, and/or shall conduct tests and submit data (see 40 CFR 799.2500(b)(1), published in the Federal Register of December 20, 1985 (50 FR 51857, 51867)).

The Phase I test rule exempts persons who manufacture or process MO only as an impurity from the testing and reimbursement requirements. EPA stated in the preamble to the rule that persons who manufacture or process MO as a byproduct are subject to the rule (50 FR 51863). The definitions for

byproduct and impurity are provided in the data reimbursement rule (40 CFR 791.3). In part, the Agency chose to require testing by those who manufacture and process MO as a byproduct while exemption those doing so solely as an impurity because it considered the former activities to constitute intentional manufacture and processing while it believed that persons engaged in the latter activities often would be unaware that another substance contained MO as an impurity. At that time, EPA had not identified any persons who manufactured or processed MO as a byproduct.

On October 29, 1986, Hoffman LaRoche, Inc., notified EPA that it produces over 12,000 pounds of MO daily during the manufacture of Vitamin C. The MO is manufactured when acetone (the carrier solvent used in the synthesis of Vitamin C) enters an acidic environment and some is converted into MO. Hoffman LaRoche also processes this MO for reuse by converting it back into acetone. A small volume of the MO, which is found as a component of its reactor vessel residue, is disposed of as a hazardous waste (Ref. 1 below).

A wide variety of chemical processes utilize acetone either as a carrier or process solvent or as an intermediate (Table 1 below). These processes may result in the generation of MO as a byproduct.

The Agency has identified several implementation problems associated with making those who manufacture a chemical solely as a byproduct of the processing or use of another substance and those who intentionally manufacture a chemical equally subject to all provisions of a section 4 test rule. The Agency has been evaluating ways to rectify these problems. One possible solution would be to modify 40 CFR Parts 790 and 791 so that those who manufacture a chemical solely as a byproduct of the processing or use of another substance would be subject to only those provisions that processors of the test rule chemical must now comply with. However, such modifications to final rules must first be proposed and opened to public comment before they can be issued as final rules. In the interim, persons situated like Hoffman LaPoche, producing MO as a byproduct in the above or other types of processes, are considered to be manufacturers of MO and are subject to the requirements of the MO test rule that apply to manufacturers. They have an obligation to submit a notice of intent to test or to apply for an exemption from testing.

Table 1.—Uses of Acetone

Chemical intermediate uses in the production of:

Methacrylates
Methyl isobutyl ketone
Methyl isobutyl carbinol
Mesityl oxide
Bisphenol A
Hexylene glycol
Isophorone
Ketene
Isopropylamines
Diacetone alcohol
Methyl isomyl ketones
Pentoxone
Pharmaceuticals

Solvent uses in:

Paints, paint strippers, varnishes, and lacquers.

Other resin solutions—adhesives, thinners, nitrocellulose cement and heatseal coatings, vinyl-type grease resistant coatings.

Manufacture of acetate fibers.

Specification testing of vulcanized rubber products.

II. Final Phase I Test Rule**A. Exemption Procedures**

The Agency specified that within 30 days after the effective date of the final Phase I rule, each MO manufacturer must either (1) notify EPA that it intends to conduct or sponsor testing and submit study plans for the required tests, or (2) apply for an exemption on a belief that testing will be performed by others.

B. Conditional Exemptions

The final rule for test rule development and exemption procedures in 40 CFR Part 790 indicates that, when certain conditions are met, exemption applications will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if any test sponsor has not complied with the test rule.

Sponsors have indicated to EPA by letter of intent (Ref. 2 below) their agreement to sponsor all of the tests required for MO in the final Phase I test rule for this substance (50 FR 51857; December 20, 1985). The Agency plans

to grant conditional exemptions to all exemption applicants for all of the testing required for MO in 40 CFR 799.2500 when it promulgates the final Phase II test rule for MO.

C. Manufacturers Must Submit Letters of Intent of Exemption Applications

The promulgation date for the MO Phase I final rule was established as 1 p.m. eastern standard time on January 8, 1986. The effective date of this rule was February 3, 1986. Manufacturers had until March 5, 1986, to submit either a letter of intent to conduct the required tests or an application for exemption according to the procedures specified in 40 CFR 790.45. Throughout the rulemaking proceedings for MO, the Agency was unaware that a wide diversity of manufacturing processes may generate MO as a byproduct. Furthermore, this matter was not brought to the Agency's attention during the public meetings held on the proposed test rule. Because EPA clearly stated in the preamble to the rule that persons who manufacture or process MO as a byproduct are subject to the rule (50 FR 51863), EPA believes that persons producing MO as a result of processing or using acetone in an acidic environment should have been aware that they were subject to the rule. Nevertheless, EPA is now amplifying the guidance given in the preamble to the final test rule to make this explicit. The rule also specified that processors of MO who are not also manufacturers of MO are not required to submit letters of intent to test or exemption applications unless manufacturers fail to sponsor the required tests (50 FR 51864). Although several manufacturers have notified EPA of their intent to conduct the required testing (Ref. 2), those who manufacture MO as a byproduct are still required to submit either a notice of intent to test or an application for exemption.

Persons who manufacture MO and have not submitted a notice of intent to test or an application for exemption from testing are encouraged to do so. EPA will take into consideration voluntary disclosure of noncompliance with this requirement when determining the appropriate enforcement response for this violation of a TSCA section 4 test rule. The Agency gives additional consideration for disclosure within 30 days of knowledge of the violation. Unlike noncompliance that is voluntarily disclosed, violations detected by the Agency are subject to the full penalties provided in the Agency's TSCA section 4 Enforcement Response Policy.

III. References

(1) Hoffman LaRoche, Inc., Nutley, NJ 07110. Letter from Mark Lewis to Charles Elkins, Director, Office of Toxic Substances, Environmental Protection Agency, Washington, DC 20460. (October 29, 1986).

(2) CMA, Chemical Manufacturers Association. Letter from Geraldine Cox, Chemical Manufacturers Association, 2501 M St., NW., Washington, DC 20037 to TSCA Public Information Office, U.S. Environmental Protection Agency, Washington, DC 20460. (March 3, 1986).

Dated: March 26, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

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**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

44 CFR Part 64

[Docket No. FEMA 6748]

**List of Communities Eligible for the
Sale of Flood Insurance**

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Central Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and

administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127).

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.