



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[EPA-HQ-OPPT-2011-0363; FRL-9375-3]

RIN 2070-AJ89

Health and Safety Data Reporting; Addition of Certain Chemicals; Withdrawal of Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; withdrawal.

SUMMARY: EPA is withdrawing the final Toxic Substances Control Act (TSCA) section 8(d) Health and Safety Data Reporting Rule that it issued on December 3, 2012. The health and safety data reporting rule would have required manufacturers (including importers) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies to EPA.

DATES: The final rule published on December 3, 2012 at 76 FR 71561 is withdrawn effective [Insert Date of Publication in the Federal Register].

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2011-0363, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional

12T-1852

information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:*

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For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this withdrawal if you are a manufacturer (including importer) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products.

B. What Action is the Agency Taking?

In the **Federal Register** issue of December 3, 2012 (77 FR 71561) (FRL-9355-9), EPA issued a health and safety data reporting rule that would have required manufacturers (including importers) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into

consumer products to report certain unpublished health and safety studies to EPA. EPA has good cause to withdraw the final rule.

In this document, EPA is withdrawing the final health and safety data reporting rule that it issued pursuant to TSCA section 8(d) on December 3, 2012. Since the final rule's issuance, EPA has received a number of letters, including requests for withdrawal under § 716.105(c)-(d), asking questions and raising concerns about the scope and extent of the immediate final rule that indicate that there is significant confusion and uncertainty about the final rule in certain industrial sectors subject to the final rule. For example, EPA received comments that the regulatory text did not clearly specify which additional industrial sectors beyond those subject to reporting in § 716.5(a) must report unpublished health and safety studies, as required by § 716.5(b). EPA believes that some of the points raised in the letters warrant additional consideration by the Agency. Comments received by EPA are available in the docket under docket ID number EPA-HQ-OPPT-2011-0363. EPA has concluded that these concerns are good cause per § 716.105(c) to withdraw the health and safety data reporting rule that it issued on December 3, 2012.

EPA finds that there is "good cause" under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to withdraw this final rule without prior notice and comment. EPA believes notice and an opportunity for comment on this action are impracticable and unnecessary. Public notice and comment is impracticable because EPA has only a limited time to publish this withdrawal. That is, EPA must publish a document in the **Federal Register** pursuant to § 716.105(c) withdrawing the addition of cadmium before January 2, 2013, the effective date of the cadmium amendment. Furthermore, notice and comment is unnecessary because this withdrawal conforms to the withdrawal

procedure of §716.105(c) of the part 716 model rule, which EPA promulgated in 1985 regarding withdrawal after having solicited public comment on the need for and mechanics of this procedure as published in the **Federal Register** issue of August 28, 1985 (50 FR 34809). EPA is adhering to this previously promulgated procedure in this withdrawal, which requires such action to occur by publishing a **Federal Register** document “[p]rior to the effective date of [the listing] under paragraph (b) of this section.” See § 716.105(c).

EPA also finds that this final rule is not subject to the 30 day delay of the effective date generally required by 5 U.S.C. 553(d). This final rule is “a substantive rule which grants or recognizes an exemption or relieves a restriction,” 5 U.S.C. 553(d)(1), because it lifts the reporting requirement on certain manufacturers (including importers) of cadmium or cadmium compounds. This final rule must be made effective prior to the effective date of the addition of cadmium and cadmium compounds to the TSCA section 8(d) model rule (January 2, 2013) in order to relieve this restriction.

II. Statutory and Executive Order Reviews

For the reasons already stated, this final rule withdraws a previously issued final rule without imposing any new requirements. As such, the following statutory and Executive Order requirements do not apply to this action:

- This action is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), Executive Order 13563, entitled “Improving Regulation and Regulatory Review” (76 FR 3821, January 21, 2011), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

- As discussed previously, the Agency has invoked the “good cause” exemption in APA section 553(b)(3)(B). Because this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538).

- This final rule does not have tribal implications, as specified in Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), or federalism implications as specified in Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999).

- Since this action is not subject to Executive Order 12866, it is not subject to Executive Orders 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), and 13211, “Actions concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

- This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note) do not apply.

- The Agency is not required to and has not considered environmental justice-related issues as specified in Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

III. Congressional Review Act (CRA)

Pursuant to the CRA (5 U.S.C. 801 *et seq.*), EPA will submit a report containing

this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of January 2, 2013.

List of Subjects in 40 CFR Part 716

Environmental protection, Chemicals, Hazardous substances, Health and safety studies, Reporting and recordkeeping requirements.

Dated: December 20, 2012.

James Jones,

Acting Assistant Administrator,

Office of Chemical Safety and Pollution Prevention.

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