

MFASC & MFANC Member Alert

Sodium Hypophosphite

California Controlled Chemical Substance Program

July 22, 2014

Federal Program – Sodium hypophosphite that is used with electroless nickel plating processes has been identified as a controlled substance pursuant to the federal Controlled Substances Act. The requirements of the Act are administered and enforced by the U.S. Drug Enforcement Administration (DEA), Office of Diversion Control. Anyone that manufactures, sells, distributes, transfers or stores mixtures that contain 30 percent or more concentration of sodium hypophosphite is required to obtain a federal registration for each location where sodium hypophosphite is physical present at any time. Pursuant to the federal requirements end users of sodium hypophosphite such as platers are not required to have a DEA registration for their facilities.

California Program – in addition to the federal requirements, the State of California also has its own separate regulatory program for controlled substances including sodium hypophosphite. The state statute, the Controlled Chemical Substance Program (CCSP), is administered and enforced by the California Department of Justice (DOJ) and imposes requirements on anyone who manufactures, sells, distributes, transfers, or otherwise furnishes sodium hypophosphite of any percentage in California. The requirements include a permit from DOJ and the submission of a report to DOJ at least 21 days in advance of each delivery of the substance.

Shipments from Outside California – Anyone who obtains sodium hypophosphite from a source outside California must obtain a permit from DOJ and submit a report to DOJ at least 21 days in advance of obtaining the substance. DOJ may authorize the submission of reports within 72 hours, or within a timeframe it deems acceptable. Accordingly, a plating shop that receives sodium hypophosphite directly from a source outside of California must have a permit from DOJ and submit a report to DOJ at least 21 days before receiving each shipment of sodium hypophosphite.

Penalties – Anyone who fails to comply with the California requirements is subject to criminal penalties of six months imprisonment and a \$5,000 fine (penalties are significantly more for repeat violations).

To avoid these requirements and potential exposure to penalties, platers must obtain sodium hypophosphite from a source with a location within or outside of California that has a current permit from the CA DOJ, who submits the report at least 21 days in advance of delivering the sodium hypophosphite.

In an effort to further clarify these regulations for our members, the Associations have asked two questions of the CA DOJ:

Question One – Is a DOJ permit required of a business (plater, supplier) physically located in California that purchases sodium hypophosphite from an out-of-state company for use in California?

DOJ Answer One – Yes, a permit is required as per the provisions of Health and Safety Code Section 11106. The business is required to obtain a permit and comply with the reporting requirements. The permit and report would not be required if the purchase is made from an in-state company which would itself comply with the requirements. A permit can be requested by email to CCSP@doj.ca.gov.

Question Two – Is there a de minimis exception with regard to either the concentration of sodium hypophosphite [such as the federal mixture concentration of 30%], or the amount of sodium hypophosphite sold, transferred or obtained [such as one liter for a lab]?

DOJ Answer Two – No, there is no de minimis exception. There are exceptions in the federal and state law for certain uses, such as laboratories.

Additional details on the California requirements for sodium hypophosphite are provided as follows. If you have any questions or would like additional information, please contact Norm Plotkin with MFASC and MFANC at exec@mfaca.org, Jeff Hannapel with the National Association for Surface Finishing (NASF) at jhannapel@thepolicygroup.com. The CCSP can also be contacted directly. *Jeff Blake*

CCSP Contact Information – permit applications and reporting forms are available from the CCSP:

Note for those calling the CCSP - due to severe staff cuts, staff may only available to answer calls on Tuesdays and Thursdays (and availability on those days might be limited).

Mailing Address:

CONTROLLED CHEMICAL SUBSTANCE PROGRAM (CCSP)
DEPARTMENT OF JUSTICE, BUREAU OF INVESTIGATION
P.O. Box 161089, Sacramento, California 95816-1089

Physical Address:

CONTROLLED CHEMICAL SUBSTANCE PROGRAM (CCSP)
DEPARTMENT OF JUSTICE, BUREAU OF INVESTIGATION
4949 Broadway Suite B-222, Sacramento, California 95820
Phone: (916) 227-4222 Temporary Fax: (916) 227-4039
Email Address: CCSP@doj.ca.gov

Website Address:

<http://www.oag.ca.gov/bi/ccsp>

Documents

The CCSP has provided the attached documents to assist companies in their efforts to comply.

In addition, the CCSP has posted the two following forms on-line:

BNE 034: <http://caag.state.ca.us/bne/pdfs/BNE034.pdf>

BNE 012: <http://ag.ca.gov/bne/pdfs/BNE012.pdf>

Applicable Laws:

California Health and Safety Code Section 11100-11111:

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=11001-12000&file=11100-11111>

Key state laws set forth in the California Health and Safety Code include:

Section 11100 Excerpts:

“(a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes any of the following substances to any person or entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:”

“(36) Red phosphorus, including white phosphorus, hypophosphorous acid and its salts, ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, sodium hypophosphite, and phosphorous acid and its salts.”

“(c) (1) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (i) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (ii) proper identification from the purchaser.”

“(c) (2) (B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer has established a record of utilization of the substance for lawful purposes.”

“(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.”

“(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both the fine and imprisonment.”

“(f) (2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment

in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or by both the fine and imprisonment.”

Section 11100.1 Excerpts:

“(a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that obtains from a source outside of this state any substance specified in subdivision (a) of Section 11100 shall submit a report of that transaction to the Department of Justice 21 days in advance of obtaining the substance. However, the Department of Justice may authorize the submission of reports within 72 hours, or within a timeframe and in a manner acceptable to the Department of Justice, after the actual physical obtaining of a specified substance with respect to repeated transactions between a furnisher and an obtainer involving the substances, if the Department of Justice determines that the obtainer has established a record of utilization of the substances for lawful purposes.”

“(b) (1) Any person specified in subdivision (a) who does not submit a report as required by that subdivision shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars (\$5,000), or by both that fine and imprisonment.”

“(b) (2) Any person specified in subdivision (a) who has been previously convicted of a violation of subdivision (a) who subsequently does not submit a report as required by subdivision (a) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars (\$100,000), or by both that fine and imprisonment.”

Section 11106 Excerpts:

“(a) (1) (A) Any manufacturer, wholesaler, retailer, or any other person or entity in this state that sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. For any substance added to the list set forth in subdivision (a) of Section 11100 on or after January 1, 2002, the Department of Justice may postpone the effective date of the requirement for a permit for a period not to exceed six months from the listing date of the substance.”

“(a) (1) (B) An intracompany transfer does not require a permit if the transferor is a permittee.”

Further information will be posted on our website at www.mfaca.org

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