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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-8937-9]

Autoliv ASP Inc. Facility in Promontory, UT, Under Project XL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is withdrawing a final rule published on May 9, 2001 which modified the regulations under the Resource, Conservation and Recovery Act (RCRA) to enable the implementation of the Autoliv XL project that was developed under EPA's Project eXcellence in Leadership (Project XL) program. Project XL was a national pilot program that allowed State and local governments, businesses and Federal facilities to work with EPA to develop more cost-effective ways of achieving environmental and public health protection. In exchange, EPA provided regulatory, policy or procedural flexibilities to conduct the pilot experiments.

DATES: The final rule is effective August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sandra Panetta, Mail Code 1870T, U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Ms. Panetta's telephone number is (202) 566-2184 and her e-mail address is panetta.sandra@epa.gov. Further information on today's action may also be obtained on the Internet at <http://www.epa.gov/projectxl/autoliv/index.htm>.

SUPPLEMENTARY INFORMATION: EPA is withdrawing the final rule which was published on May 9, 2001 (66 FR 23617) in response to Autoliv's request in a letter to the State of Utah dated October 7, 2003 to withdraw the XL project. The final rule granted Autoliv an exemption under Project XL from the definition of hazardous waste for treatment of waste in an on-site Metals Recovery Furnace (MFR) at the Promontory Facility instead of sending the materials off-site to be treated. Prior to implementation of the project, new criteria were set forth by the Utah Division of Air Quality in the MACT standard for dioxins. The project became economically impracticable given the added cost to upgrade Autoliv's facility to meet the new requirement and the project was not implemented. Discontinuing the XL project will have no environmental impact. All reporting requirements in 40 CFR 261.4(b)(18) are

discontinued.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause

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for making today's rule final without prior proposal and opportunity for comment because EPA is withdrawing a rule that no longer applies to the company and the company has notified us that the project was not implemented. The removal of the rule has no legal effect. Notice and public procedure would serve no useful purpose and is thus unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ``significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order. This rule is of particular applicability because it applies to one facility and therefore it falls outside the scope of Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. because it is withdrawing a rule that was not implemented and does not impose any new requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule

is not subject to notice and comment requirements under the APA or any other statute because it withdraws a rule that applied to only one facility and does not impose any new requirements. In addition, the agency has made a ``good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see SUPPLEMENTARY INFORMATION section), therefore it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. Because the agency has made a ``good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute (see SUPPLEMENTARY INFORMATION section), it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4).

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action withdraws a rule that was not implemented.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ``Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ``meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ``Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This final rule does not have federalism implications. It will 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. This rule withdraws a rule that was specific to one facility. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule withdraws a rule that was not implemented. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: ``Protection of Children From Environmental Health Risks and Safety Risks''

(62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ``economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ``Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement

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Act of 1995 (``NTTAA''), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the

environment. This rule applies to one facility and withdraws a rule that was not implemented.

K. The 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 today's action under section 801 because it is a rule of particular applicability and does not impose any new requirements.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: July 24, 2009.

Lisa P. Jackson,
Administrator.

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For the reasons set forth in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261--IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

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2. Section 261.4 paragraph (b)(18) is removed.

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