List of Regulated Substances and Thresholds for Accidental

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Part IV
Environmental Protection Agency

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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 68
[FRL-5657-7]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Proposed Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing several modifications to the rule listing regulated substances and threshold quantities under section 112(r) of the Clean Air Act as amended. EPA is proposing to delete the category of Division 1.1 explosives (as listed by DOT) from the list of regulated substances. Regulated flammable substances in gasoline used as fuel and in naturally occurring hydrocarbon mixtures prior to initial processing are proposed for exemption from threshold quantity determinations, and a clarification of the provision for threshold determination of flammable substances in a mixture is proposed. Modifications to the definition of stationary source are proposed to clarify the exemption of transportation and

storage incident to transportation and to clarify that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. In addition, EPA is clarifying that the Chemical Accident Prevention Provisions do not apply to sources located on the Outer Continental Shelf. EPA believes these proposed changes will better focus accident prevention activities on stationary sources with high hazard operations and reduce duplication with other similar requirements.

DATES: Comments. Comments must be submitted on or before May 15, 1996 unless a hearing is requested by April 25, 1996. If a hearing is requested, written comments must be received by May 30, 1996.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than April 25, 1996. If a hearing is held, it will take place on April 30, 1996 at 9:30 a.m.

ADDRESSES: Comments. Comments should be mailed or submitted to: Environmental Protection Agency, Air Docket (6102), Attn: Docket No. A-

96-O8, Waterside Mall, 401 M St. SW, Washington, DC 20460. Comments must be submitted in duplicate. Comments may be submitted on disk in WordPerfect or Word formats. If a public hearing is held, written testimony should be submitted in duplicate at the time of the hearing.

Public Hearing. If a public hearing is held, it will be held at Waterside Mall, 401 M St. SW, Washington, DC 20460, in the Conference Center in a room to be designated. Persons interested in attending the hearing or wishing to present oral testimony should notify by telephone Vanessa Rodriguez (see For Further Information Contact).

Docket. The docket for this rulemaking is A-96-O8. This proposed rule would amend a final rule, the docket for which is A-91-74. The docket may be inspected between 8:00 am and 5:30 pm, Monday through Friday at EPA's Air Docket, Room M1500, Waterside Mall, 401 M St. SW, Washington, DC 20460; telephone (202) 260-7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Vanessa Rodriguez, Chemical Engineer,
Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, OS-120, 401 M St. SW, Washington, DC 20460, (202) 260-7913.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Background

A. Statutory Authority

This notice of proposed rulemaking (NPRM) is being issued under sections 112(r) and 301 of the Clean Air Act (Act) as amended (42 U.S.C. sections 7412(r) and 7601).

B. Background

The Clean Air Act (CAA or Act), section 112(r), contains requirements related to prevention of accidental releases. The goal of the accidental release provisions is to prevent accidental releases and minimize the consequences of releases by focusing on those chemicals and operations that pose the greatest risk. The CAA requires EPA to promulgate an initial list of at least 100 substances (``regulated substances'') that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. The Act identifies 16 substances to be included in the initial list. Factors required to be considered in listing substances are the severity of acute adverse health effects associated with accidental releases of the substance, the likelihood of accidental releases of the substance, and the potential magnitude of human exposure to accidental releases of the

substance. The CAA also requires EPA to establish a threshold quantity for each chemical at the time of listing. In developing these thresholds, factors required to be considered include toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which is known to cause or can be reasonably anticipated to cause death, injury, or serious adverse effects in case of a release. Stationary sources that have more than a threshold quantity of a regulated substance are subject to accident prevention regulations promulgated under CAA section 112(r)(7), including the requirement to develop risk management plans.

EPA's final rule on the list of substances and thresholds (59 FR 4478, January 31, 1994) (the ``List Rule'') promulgated the regulated list of substances and thresholds that identify sources subject to the accident prevention rules. EPA subsequently sought comment on a proposed accident prevention (``risk management program'') rule in two notices and intends to promulgate a final rule in late Spring 1996. (See 58 FR 54190, October 20, 1993; 60 FR 13526, March 13, 1995.) For additional information on the requirements of section 112(r) and related statutory provisions, see these notices.

C. Summary of the List Rule

In the List Rule, EPA promulgated a list that includes 77 acutely toxic substances, 63 flammable gases and volatile flammable liquids, and Division 1.1 high explosive substances as listed by the United States Department of Transportation (DOT) in 49 CFR 172.101. The final rule establishes threshold quantities for toxic substances ranging from 500 to 20,000 pounds. For all listed flammable substances, the threshold quantity is 10,000 pounds,

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while all explosive substances have a threshold quantity of 5,000 pounds. The rule sets forth the procedures for determining whether a threshold quantity of a regulated substance is present at a stationary source. Specific exemptions for quantities considered in the threshold determination are also included for mixtures, articles, and certain uses and activities. The rule also specifies the requirements for any petitions to the Agency requesting to add substances to, or delete substances from, the list.

The criteria EPA considered in selecting substances for listing include severity of acute adverse health effects, likelihood of release, and potential magnitude of human exposure. EPA was required to set threshold quantities for each regulated substance considering its toxicity, reactivity, volatility, dispersibility, and flammability, as well as amounts known or anticipated to cause effects of concern.

EPA selected commercially produced acutely toxic and volatile substances mostly from the list of extremely hazardous substances (EHSs) under section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA). EPA chose volatile substances because they are more likely to become airborne and impact the public. EPA also considered accident history associated with a substance. One substance, oleum, was listed because it has a history of accidents that have impacted the public. Because vapor cloud explosions and blast waves from detonations of high explosives have caused injuries to the public and damage to the environment, EPA also included highly flammable gases and liquids and high explosives on the list.

The American Petroleum Institute (API), the Institute of Makers of Explosives (IME), and one other party filed petitions for judicial review of the List Rule (American Petroleum Institute v. EPA, No. 94-1273 (D.C. Cir.) and consolidated cases). On March 28, 1996, EPA made available for public comment under CAA section 113(g) proposed settlement agreements with API and IME (61 FR 13858, March 28, 1996).

II. Discussion of Proposed Modifications

Following EPA's promulgation of regulated substances and thresholds in the List Rule, the petitioners mentioned above and other members of the regulated community raised a number of issues concerning the list and thresholds. Certain provisions of the List Rule that seemed inconsistent with EPA's intent expressed in the preamble or other documents supporting the final rule were identified. Additional information was also received addressing the concerns that led to the regulation. As a result, EPA is proposing the following amendments to the final rule: delisting explosives; exempting from threshold determination regulated flammable substances in gasoline and in naturally occurring hydrocarbon mixtures prior to initial processing; clarifying the provision for threshold determination of flammable substances in mixtures to exempt mixtures that do not have a National Fire Protection Association (NFPA) flammability hazard rating of 4; modifying the definition of stationary source to clarify the exemption of transportation and storage incident to transportation and to clarify that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources; and clarifying that the chemical accident prevention provisions do not apply to sources located on the Outer Continental Shelf (``OCS sources'').

A. Explosives

In the final rule (59 FR 4478, January 31, 1994), EPA included explosives classified by DOT as Class 1, Division 1.1, and listed as such in 49 CFR 172.101 (the Hazardous Materials Table) as regulated substances with a threshold quantity of 5,000 pounds. Division 1.1 explosives were listed because of their potential to readily detonate, causing offsite impacts. While acknowledging that explosives are regulated by a number of other agencies, EPA maintained that public safety would be enhanced if additional information about explosives, such as hazard assessments, were available to emergency response agencies and local emergency planners under section 112(r). EPA's primary concern was that there were gaps in the existing regulatory framework in the area of communication with emergency responders and local planners because existing regulations and programs were not comprehensive. EPA noted that public safety would be enhanced by additional coordination between facilities handling explosives and the

local emergency planners and responders.

Subsequent to promulgation of the List Rule, IME provided EPA with additional information about the extent of the regulatory gaps discussed above, including coordination with emergency responders. After additional review of other federal, state, and local laws and regulations for explosives, as well as industry practices for explosives manufacturing and storage, EPA has concluded that current regulations and current and contemplated industry practices promote safety and accident prevention in storage, handling, transportation, and use of explosives. As a result, these regulations and practices adequately protect the public and the environment from the hazards of accidents involving explosives. Explosives are regulated by the Bureau of Alcohol, Tobacco and Firearms (BATF), the Mine Safety and Health Act (MSHA), the Occupational Safety and Health Act (OSHA), the Department of Defense (DoD), the Department of Transportation (DOT), and state and local agencies. BATF's American Table of Distances (ATD) specifies distances for explosive storage from inhabited buildings, public highways, and passenger railways; these distances are great enough to ensure that an accidental explosion at a site that is in compliance with the ATD should not produce blast waves that are hazardous to people at distances where the public could be affected (the hazard to which the public could be exposed if a site complies with the ATD is significantly lower than that which the Agency would be protecting against with its listing of Division 1.1 explosives at a 5,000-pound threshold). Most facilities that manufacture or store explosives already are required to develop emergency response plans and to provide local emergency responders with copies of Material Safety Data Sheets (MSDSs) or lists of materials with MSDSs, or to advise local emergency responders regarding the type, quantity, and location of Division 1.1 explosives on site.

EPA's review of existing regulations and current industry practices still indicates that public safety would be enhanced if some sites handling explosives made additional information about explosives available to emergency responders and planners. While EPA does not believe there are many sites that are not already coordinating with local authorities under other regulatory and voluntary programs, public safety would be enhanced if there were additional coordination between the remaining facilities handling explosives and the local emergency planners and responders. To address the gaps EPA identified, IME has developed suggested safety practices that would be adopted in due

course if EPA provides final consent to the proposed settlement agreement. These actions would provide additional information and enhance the coordination between explosives facilities and the emergency planners and responders. IME member companies would post signs at all

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normal access routes stating, ``Danger. Never Fight Explosive Fires. Explosives are stored on this site," and providing an emergency phone number. Whenever a new Division 1.1 commercial explosives storage or manufacturing location is established at a temporary job site, IME member companies would notify Local Emergency Planning Committees and other local authorities (e.g., fire departments and law enforcement agencies) of the type, quantity, and location of explosives on site. At Division 1.1 commercial explosives storage or manufacturing locations with 5,000 pounds or more of Division 1.1 explosives (not including temporary job sites) where preparation of emergency response plans is not already required, IME member companies would prepare emergency response plans, notify Local Emergency Planning Committees and other local authorities of the type, quantity, and location of explosives on site, provide the emergency response plans to local emergency responders, and respond to reasonable requests for information from said authorities. IME member companies also would inform their customers of the contents of the Settlement Agreement and the actions to be taken. IME would respond to reasonable requests from law enforcement agencies and emergency responders for information concerning the safe storage, distribution, and use of explosives. IME also would distribute a letter to other non-IME commercial explosives manufacturers, distributors, and users informing them of the Settlement Agreement and actions to be taken. The Agency believes these actions effectively close the remaining gap in emergency planning and response communications, while allowing existing laws to prevail. Therefore, EPA is proposing to delist explosives from the list of regulated substances under section 112(r). EPA requests comments on whether explosives should be delisted.

B. Regulated Flammable Substances in Gasoline and in Naturally Occurring Hydrocarbon Mixtures

In the threshold determination provisions for mixtures containing flammable regulated substances, the List Rule provides that such mixtures are exempt if the owner or operator can demonstrate that the mixture does not meet boiling point or flash point criteria; otherwise, the entire mixture is treated as a regulated substance unless another exemption applies. The boiling point and flash point are objectively determinable and derived from the definition of highly flammable liquids and gases, National Fire Protection Association (NFPA) flammability hazard rating of 4. Although EPA did not specifically exempt gasoline and naturally occurring hydrocarbon mixtures (e.g., crude oil) from threshold determination, it did not intend the List Rule to cover regulated flammable substances in mixtures that do not meet the NFPA 4 criteria. Gasoline and crude oil are listed with NFPA flammability ratings of 3 in Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids, NFPA 325M (1991 edition). EPA noted in Proposed List of Substances and Threshold for Accidental Release Prevention: Summary and Response to Comments (1994) that it believed gasoline does not meet the boiling point criterion for listing. EPA also noted that it considered unlisted hydrocarbons that fail to meet the NFPA 4 criteria to represent a lower priority for accident prevention.

The NFPA criteria contain both the objective elements included in EPA's rule as well as certain judgmental criteria. NFPA 4, as defined in the NFPA Standard System for the Identification of Fire Hazards of Materials, NFPA 704 (1990 edition), includes the following:

``Materials that will rapidly or completely vaporize at atmospheric pressure and normal ambient temperature, and which will burn readily. This degree usually includes:

Flammable gases;

Flammable cryogenic materials;

Any liquid or gaseous material that is liquid while under pressure and has a flash point below 73 deg.F (22.8 deg.C) and a boiling point

below 100 deg.F (37.8 deg.C) (i.e., Class IA flammable liquids);

Materials that ignite spontaneously in air."

Thus, the promulgated threshold determination provision does not exempt mixtures that meet the flash point and boiling point criteria, but that do not rapidly or completely vaporize and, therefore, are not true NFPA 4 mixtures based on the full definition. In particular, certain grades of gasoline and some naturally occurring hydrocarbon mixtures might be subject to threshold determination under the provisions of the final rule, based on the flash point and boiling point criteria, even though these mixtures do not meet the judgmental criteria of NFPA 4.

To better reflect EPA's original intent to exempt non-NFPA 4 mixtures and to clarify the regulatory status of gasoline and naturally occurring hydrocarbon mixtures (e.g., crude oil and natural gas condensate), EPA is proposing to provide specific exemptions from threshold determination for regulated flammable substances in gasoline used as fuel for internal combustion engines and for regulated substances in naturally occurring hydrocarbon mixtures prior to initial processing in a petroleum refining process unit or a natural gas processing plant. Naturally occurring hydrocarbon mixtures would include any or any combination of the following: condensate, crude oil, field gas, and produced water. EPA is proposing definitions of these substances for inclusion in the rule and is also proposing definitions of petroleum refining process unit and natural gas processing plant. EPA believes the proposed definitions reflect standard, widely accepted meanings of these terms.

EPA believes gasoline and the naturally occurring hydrocarbon mixtures condensate and crude oil, because they contain many non-

volatile components, have low potential for vapor cloud explosions (the basis for listing flammable substances under CAA section 112(r)), even if, in some cases, they may meet the flash point and boiling point criteria cited in the final rule. Produced water in naturally occurring hydrocarbon mixtures would likely reduce the flammability and potential for vapor cloud explosion of these mixtures. EPA believes field gas, prior to initial processing, also has low potential for vapor cloud explosions that might have an impact on the public. Exploration and production facilities likely do not have many congested areas or

confined spaces; congested areas or turbulent conditions (in an advancing flame front) generally are necessary for a vapor cloud explosion to occur. On-site processes are relatively simple, and there are unlikely to be many ignition sources. The American Petroleum Institute (API) evaluated the potential consequences of releases of naturally occurring hydrocarbon mixtures at oil and gas exploration and production facilities, as discussed in Hazard Assessment of Exploration and Production Facilities Potentially Subject to the Environmental Protection Agency's Risk Management Program Regulations (January 20, 1995) (see docket), and concluded that hazard distances were generally very short for the types of facilities evaluated. Finally, EPA believes these explicit, specific, and clear exemptions for gasoline and naturally occurring hydrocarbons are useful in addition to revising the flammable mixture provision to better reflect NFPA 4, because they simplify the task of applying the judgmental criteria of NFPA 4 for these pervasive mixtures.

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As naturally occurring hydrocarbon mixtures undergo processing in a petroleum refining process unit or a natural gas processing plant, the potential for a vapor cloud explosion likely increases. The processes are more complex, there may be significant on-site congestion from buildings and equipment, flammable substance may be stored in large quantities, and there may be many ignition sources. The components of crude oil and condensates may be separated based on volatility. The more volatile mixtures (or purified substances) resulting from such processing may meet the criteria for NFPA 4 and, therefore, would need to be considered for threshold determination in accordance with the provisions for threshold determination of regulated flammable substances in mixtures, as discussed in the next section of this preamble. Similarly, before gasoline is finally formulated into a fuel for internal combustion engines, during processing in a refinery, it may meet the criteria for NFPA 4 and, therefore, would need to be considered for threshold determination in accordance with the provisions for threshold determination of regulated flammable substances in mixtures.

EPA requests comments on the proposed exemption from threshold determination for gasoline used as fuel for internal combustion engines and specifically requests comments on whether the qualifying phrase, ``used as fuel for internal combustion engines,'' is a necessary part of the exemption. EPA also requests comments on the proposed exemption for regulated substances in naturally occurring hydrocarbon mixtures prior to initial processing and on the proposed definitions related to the exemption for naturally occurring hydrocarbon mixtures.

C. Clarification of Threshold Determination of Regulated Flammable Substances in Mixtures

In the final rule, EPA provided flash point and boiling point criteria for determining whether a mixture containing a regulated flammable substance is subject to threshold determination. Although these flash point and boiling point criteria are associated with an NFPA rating of 4, the NFPA rating was not specifically cited as a criterion. As discussed in the preamble to the List Rule, EPA believes that mixtures that do not have an NFPA rating of 4 should not be subject to threshold determination. Based on comments from the regulated community, EPA now believes the flash point and boiling point criteria, although they are part of the criteria for the NFPA 4 rating, are not adequate by themselves to identify mixtures with the NFPA 4 rating. As noted above, the NFPA 4 rating applies to substances that will rapidly or completely vaporize at atmospheric pressure and normal ambient temperature or that are readily dispersed in air, and that will burn readily. Like gasoline and crude oil, which have NFPA 3 ratings for flammability, other mixtures may contain low boiling flammable components that would cause the mixture to meet the flash point and boiling point criteria, but also contain higher boiling components that would prevent the mixture from rapidly or completely vaporizing. To clarify threshold determination for mixtures, EPA is proposing to provide that, for mixtures that have one percent or greater concentration of a regulated flammable substance, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture does not have an NFPA flammability hazard rating of 4, as defined in the NFPA Standard System for the Identification of Fire Hazards of Materials, NFPA 704-

1990. EPA requests comments on this proposed clarification, which would be in addition to the specific exemption proposed for gasoline and naturally occurring hydrocarbons.

D. Definition of Stationary Source

The List Rule defined stationary source to exclude transportation, including storage incident to transportation, provided such transportation is regulated under 49 CFR parts 192, 193, or 195. In addressing issues related to EPCRA, which also excludes transportation in commerce for most purposes, EPA has interpreted the transportation exclusion to exempt substances being transported in commerce or in storage under active shipping papers and to treat as a ``stationary item'' any storage in containers not under active shipping papers. In the List Rule, EPA referred to DOT pipeline regulations under 49 CFR parts 192, 193, and 195, and stated in the Preamble that pipelines, transfer stations, and other activities already covered by DOT would be excluded. Furthermore, EPA intended to exclude from the definition of stationary source all transportation and storage incident to such transportation to be consistent with EPCRA. EPA believes the List Rule definition of stationary source clearly covers transportation containers only when they are no longer in transportation in commerce and clearly excludes pipelines as defined by DOT; however, based on comments from the regulated community, EPA believes there still may be potential for overlap and confusion regarding the jurisdiction and regulatory responsibility of EPA and DOT for pipelines and for transportation containers at stationary sources.

The Agency has received questions regarding the language in the stationary source definition that refers to ``transportation containers no longer under active shipping papers.'' Both EPA and DOT agree this term would generally apply to containers that are not in transportation in commerce and that are at the stationary source for purposes of storage, loading, or unloading that is not incidental to transportation in commerce. ``Transportation in commerce'' is defined by DOT pursuant to Federal Hazardous Materials Transportation Law (Federal HAZMAT Law, 49 U.S.C. sections 5107-5127). As a result of continued questions regarding the scope of Federal HAZMAT Law and the applicability of the

regulations issued thereunder, DOT is currently working to better delineate and more clearly define the applicability of its regulations. DOT currently contemplates clarifying its jurisdiction through the rulemaking process. As a result, there may be a future need for EPA to further amend the definition of stationary source to better comport with DOT clarifications or actions. The Agency will continue to work closely with DOT to minimize overlap and confusion with respect to jurisdiction and items in transportation and will coordinate with DOT to ensure that consistent interpretations about regulations coverage are provided to the regulated community.

EPA is proposing several amendments to the definition of stationary source to reflect more clearly EPA's intent. First, EPA is proposing to modify the definition of stationary source to clarify that exempt transportation shall include, but not be limited to, transportation activities subject to regulation or oversight under 49 CFR parts 192, 193, or 195, as well as transportation subject to natural gas or hazardous liquid programs for which a state has in effect a certification under 49 U.S.C. section 60105. DOT established safety standards for pipeline facilities used in the transportation of natural gas by pipeline in 49 CFR part 192, for liquefied natural gas facilities in 49 CFR part 193, and for pipeline facilities used in the transportation of hazardous liquids by pipeline in 49 CFR part 195. State programs with certifications under 49 U.S.C. section 60105 are comparable to the DOT

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requirements and thus ensure public safety.

In addition, EPA is proposing to modify the definition of stationary source to clarify that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. This interpretation is consistent with EPA's policy under EPCRA. API concluded in the Hazard Assessment of Exploration and Production Facilities Potentially Subject to the Environmental Protection Agency's Risk Management Program Regulations (January 20, 1995) that the flow of hydrocarbons from reservoirs would not contribute to the magnitude of a

catastrophic release scenario. This conclusion was based on consequence analysis of a range of fire and explosion events, assuming a range of handling conditions, types of equipment, and material compositions typical of exploration and production facilities. Finally, EPA is clarifying that the exemption for transportation containers in transportation in commerce or storage incident to such transportation is not limited to pipelines. EPA requests comments on these proposed revisions to the stationary source definition.

E. Applicability to Outer Continental Shelf

EPA is proposing an applicability exception for sources on the outer continental shelf (OCS sources). Such an exception is consistent with CAA section 328, which precludes the applicability of EPA CAA rules to such sources when such rules are not related to attaining or maintaining ambient air quality standards or to the ``prevention of significant deterioration'' provisions of the CAA.

III. Summary of Proposed Revisions to the Rule

EPA is proposing to amend several sections of part 68 of title 40 of the Code of Federal Regulations.

In Sec. 68.3, the definition of stationary source would be revised. The revised definition would specifically state that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. The definition would state that exempt transportation shall include, but not be limited to, transportation activities subject to regulation or oversight under 49 CFR parts 192, 193, or 195, as well as transportation subject to natural gas or hazardous liquid programs for which a state has in effect a certification under 49 U.S.C. section 60105.

Several new definitions are proposed for Sec. 68.3, for condensate,

crude oil, field gas, natural gas processing plant, petroleum refining process unit, and produced water.

Section 68.10 is proposed to be amended to clarify that part 68 does not apply to OCS sources.

Several revisions are proposed for Sec. 68.115 on threshold determination. Section 68.115(b)(2) is proposed to be modified to state that the entire weight of the mixture containing a regulated flammable substance shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture does not have an NFPA flammability hazard rating of 4. Another proposed modification to Sec. 68.115(b)(2) would exempt from threshold determination regulated flammable substances in gasoline used as fuel in internal combustion engines. Regulated substances in naturally occurring hydrocarbon mixtures (including condensate, crude oil, field gas, and produced water), prior to entry into a natural gas processing plant or a petroleum refining process unit, also are proposed to be exempt from threshold determination. Section 68.115(b)(3), on concentrations of a regulated explosive substance in a mixture, is proposed to be deleted, and 68.115(b)(4), 68.115(b)(5), and 68.115(b)(6) would be redesignated as 68.115(b)(3), 68.115(b)(4), and 68.115(b)(5).

Section 68.130 is proposed to be modified by the deletion of (a), explosives listed by DOT as Division 1.1. Section 68.130(b) would be redesignated as 68.130(a), and 68.130(c) would be 68.130(b).

IV. Required Analyses

A. E.O. 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must judge whether the regulatory action is ``significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ``significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined this proposed rule is not a ``significant regulatory action'' under the terms of Executive Order 12866 and therefore is not subject to OMB review.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of the rule on small entities and examine alternatives that may reduce these effects.

EPA has examined the proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. It has determined that this rule will have no adverse effect on small entities because it reduces the number of substances that would be used to identify stationary sources for regulation and provides exemptions that will likely reduce the number of stationary sources subject to the accidental release prevention requirements. Therefore, I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule.

EPA has estimated that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention, Clean Air Act, Extremely hazardous substances, Incorporation by reference, Intergovernmental relations, Hazardous

substances, Reporting and Recordkeeping requirements.

Dated: April 5, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, Title 40, Chapter I, Subchapter C, Part 68 of the Code of Federal Regulations is proposed to be amended as follows:

PART 68--CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. sections 7412(r), 7601.

Subpart A--General

2. Section 68.3 is proposed to be amended by adding the following definitions in alphabetical order and revising the definition of stationary source to read as follows:

Sec. 68.3 Definitions.

* * * * *

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in temperature, pressure, or both, and remains liquid at standard conditions.

Crude oil means any naturally occurring, unrefined petroleum liquid.

* * * * *

Field gas means gas extracted from a production well before the gas enters a natural gas processing plant.

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall not be considered a ``processing site'' unless such equipment is physically located within a natural gas processing plant (gas plant) site.

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in the Standard Industrial Classification code for petroleum refining (2911) and used for the following: (1) Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants; (2) Separating petroleum; or (3) Separating, cracking, reacting, or reforming intermediate petroleum streams.

Examples of such units include, but are not limited to, petroleum-

based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and

blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

* * * * *

Produced water means water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

* * * * *

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. A stationary source includes transportation containers that are no longer under active shipping papers and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading, or unloading. A stationary source does not include naturally occurring hydrocarbon reservoirs. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. section 60105. Properties shall not be considered contiguous solely because of a railroad or gas pipeline right-of-way.

3. Section 68.10, as proposed at 60 FR 13543, is further amended by adding a paragraph (e) to read as follows:

Sec. 68.10 Applicability.

* * * * *

(e) The provisions of this part shall not apply to an Outer Continental Shelf (``OCS'') source, as defined in 40 CFR 55.2.

Subpart C--Regulated Substances for Accidental Release Prevention

4. Section 68.115 is proposed to be amended by revising paragraph (b) introductory text and paragraph (b)(2); removing paragraph (b)(3); and by redesignating paragraphs (b)(4) as (b)(3), (b)(5) as (b)(4), and (b)(6) as (b)(5) to read as follows:

Sec. 68.115 Threshold determination.

* * * * *

(b) For the purposes of determining whether more than a threshold quantity of a regulated substance is present at the stationary source, the following exemptions apply:

* * * * *

(2) Concentrations of a regulated flammable substance in a mixture.

(i) General provision. If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the mixture need not be considered when determining whether more than a threshold quantity of the regulated substance is present at the stationary source. Except as provided in paragraph (b)(2) (ii) and (iii) of this section, if the concentration of the substance is one percent or greater by weight of the mixture, then, for purposes of determining whether a threshold quantity is

present at the stationary source, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture itself does not have a National Fire Protection Association flammability hazard rating of 4. The demonstration shall be in accordance with the definition of flammability hazard rating 4 in the NFPA 704, Standard System for the Identification of the Fire Hazards of Materials, National Fire Protection Association, Quincy, MA, 1990. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-

9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-08, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. (Note: this document will only be available for inspection at the Federal Register after this action becomes a final rule.) Boiling point and flash point shall be defined and determined in accordance with NFPA 321, Standard on the Basic Classification of Flammable and Combustible Liquids, National Fire Protection Association, Quincy, MA, 1991. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. This

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incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-08, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. (Note: this document will only be available for inspection at the Federal Register after this action becomes a final rule.) The owner or operator shall document the National Fire Protection Association flammability hazard rating.

(ii) Gasoline. Regulated substances in gasoline, when in distribution or related storage for use as fuel for internal combustion

engines, need not be considered when determining whether more than a threshold quantity is present at a stationary source.

(iii) Naturally occurring hydrocarbon mixtures. Prior to entry into a natural gas processing plant or a petroleum refining process unit, regulated substances in naturally occurring hydrocarbon mixtures need not be considered when determining whether more than a threshold quantity is present at a stationary source. Naturally occurring hydrocarbon mixtures include any combination of the following: condensate, crude oil, field gas, and produced water, each as defined in Sec. 68.3 of this part.

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Sec. 68.130 [Amended]

5. Section 68.130 is proposed to be amended by removing paragraph (a) and redesignating paragraph (b) as (a), and paragraph (c) as (b). The tables to the section remain unchanged.

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