

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL-5940-4]

RIN 2050-AE35

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is modifying the rule listing regulated substances and threshold quantities under section 112(r) of the Clean Air Act as amended. EPA is deleting 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 exempted from threshold quantity determinations, and the provision for threshold determination of flammable substances in a mixture is clarified. The definition of stationary source is modified 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 changes will better focus accident prevention activities on stationary sources with high hazard operations and reduce duplication with other similar requirements.

DATES: This rule is effective January 6, 1998.

ADDRESSES: Docket: The docket for this rulemaking is A-96-08. This rule amends a final rule, the docket for which is A-91-74. The docket may be

inspected between 8:00 a.m. and 5:30 p.m., 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, (202) 260-7913, Chemical Emergency Preparedness and Prevention Office, U.S. Environmental Protection Agency, MC-5101, 401 M St. SW, Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Hotline at 1-800-424-9346.

SUPPLEMENTARY INFORMATION: Regulated Entities

Entities potentially affected by this action are those stationary sources that have more than a threshold quantity of a regulated substance in a process. Regulated categories and entities include:

Category	Examples of regulated entities
Chemical Manufacturers	Industrial organics & inorganics, paints, pharmaceuticals, adhesives, sealants, fibers.
Petrochemical	Refineries, industrial gases, plastics & resins, synthetic rubber.
Other Manufacturing	Electronics, semiconductors, paper, fabricated metals, industrial machinery, furniture, textiles.
Agriculture	Fertilizers, pesticides.
Public Sources	Drinking and waste water treatment works.
Utilities	Electric and Gas Utilities.
Others	Oil and gas exploration and production, natural gas processing, food and cold storage, propane retail, warehousing and wholesalers.
Federal Sources	Military and energy installations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table also could be affected. To determine whether a stationary source is affected by this action, carefully examine the provisions of today's notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The following outline is provided to aid in reading this preamble:

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I. Introduction and Background

A. Statutory Authority

This final rule is being issued under sections 112(r) and 301 of the Clean Air Act (CAA or Act) as amended.

B. Regulatory History

The CAA, section 112(r), 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 CAA also requires EPA to establish a threshold quantity for each chemical at the time of listing. 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.

On January 31, 1994, EPA promulgated the list of regulated substances and thresholds that identify stationary sources subject to the accidental release prevention regulations (59 FR 4478) (the "List Rule"). The listed substances included 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. EPA subsequently promulgated a rule requiring owners

and operators of stationary sources with listed substances above their threshold quantities to develop programs addressing accidental releases and to make publicly available risk management plans ("RMPs") summarizing these programs (61 FR 31668, June 20, 1996) (the "RMP Rule"). For further information on these regulations, section 112(r), and related statutory provisions, see these notices. These rules can be found in 40 CFR part 68, "Chemical Accident Prevention Provisions," and collectively are referred to as the accidental release prevention regulations.

C. List Rule Litigation

The American Petroleum Institute (API) and the Institute of Makers of Explosives (IME) 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). Consistent with these agreements, EPA proposed amendments to the List Rule on April 15, 1996 (61 FR 16598). On June 20, 1996, EPA promulgated a stay of certain provisions of the List Rule that were affected by the proposed amendments (61 FR 31730). EPA is today taking final action on the amendments proposed in April 1996.

II. Discussion of the Final Rule and Public Comments

In this final rule, EPA is taking the following actions to amend the List 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"). These amendments were proposed on April 15, 1996. EPA received 37 letters commenting on the proposal. Major comments are discussed below. Summaries of all comments and the

Agency's responses can be found in the summary and response to comments document in the docket.

A. Explosives

EPA is amending the List Rule to delete the category of high explosives from the list of regulated substances. Explosives were initially listed because of their potential to cause offsite effects from blast waves. In addition, EPA believed that there existed potential gaps in emergency planning and response communication that made risk management planning appropriate for sources with explosives. In accordance with the Settlement Agreement, IME has developed and will implement safety practices that will provide additional information and enhance the coordination between explosives facilities and the emergency planners and responders. As discussed in the preamble to the proposed rule of April 15, 1996, EPA 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. The Agency believes these actions effectively close the remaining gap in emergency planning and response communications. Therefore, EPA is taking final action to delist explosives from the list of regulated substances under section 112(r).

EPA received six comment letters on the proposal to delist explosives. All the commenters supported EPA's proposal, citing current regulations, current and contemplated industry practices, and the regulatory burden imposed by listing explosives.

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

EPA is taking final action 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. These exemptions reflect EPA's original intent to exempt flammable mixtures that do not meet the criteria for a National Fire Protection Association (NFPA) flammability hazard rating of 4 and clarify the regulatory status of gasoline and naturally occurring hydrocarbon mixtures. Naturally occurring hydrocarbon

mixtures would include any or any combination of the following: natural gas condensate, crude oil, field gas, and produced water. This rule includes definitions of these substances as well as definitions of natural gas processing plant and petroleum refining process unit.

EPA is making minor changes to the definitions proposed for natural gas processing plant and petroleum refining process unit. The North American Industrial Classification System (NAICS) code has been added to the definition for natural gas processing plant in this final rule. In addition, part of the proposed definition has been dropped, because it included the term being defined and, as a result, potentially could cause confusion. The NAICS code also has been added to the definition of petroleum refining process unit. The proposed definition of petroleum refining process unit included the Standard Industrial Classification (SIC) code (which is still cited in the definition); however, SIC codes have been replaced by NAICS codes.

EPA received 12 letters in support of the gasoline exemption. No comments were submitted opposing this exemption. Several of the commenters who supported the exemption also suggested broadening the exemption to include blendstocks, natural gasolines, and other fuels. Several suggestions were made for clarifying the gasoline exemption.

EPA does not believe the exemption should be broadened. Individual flammable substances that do not meet the criteria for NFPA 4 for flammability were not considered for listing as flammables in development of the list of regulated substances. Although substances such as blendstocks and natural gasoline are not specifically exempted, any flammable mixtures, including blendstocks and natural gasoline, that do not meet the criteria for an NFPA rating of 4 for flammability are exempt from threshold determination (see Clarification of Threshold Determination of Regulated Flammable Substances in Mixtures, discussed below). EPA believes that substances and mixtures that meet the criteria for NFPA 4, including blendstocks and fuels, should be covered by the rule, regardless of their use. EPA believes such substances have the same intrinsic hazards whether they are used as gasoline blendstocks, as fuels, or for other purposes. EPA's analysis indicates that risks associated with the storage and handling of flammable substances are a function of the properties of the materials, not their end use. EPA is

exempting gasoline because it does not meet the NFPA 4 criteria, and EPA believes it does not represent a significant threat to the public of vapor cloud explosions.

EPA received 16 letters supporting the exemption of naturally occurring hydrocarbons prior to initial processing. One commenter suggested modifying the exemption to incorporate site-specific factors because conditions conducive to vapor cloud explosions might exist at some facilities with exempted flammable substances, particularly in the case of oil and gas production facilities located adjacent to chemical production facilities. EPA recognizes that there may be cases where a facility may not be subject to the RMP requirements because of this exemption, but where the potential for vapor cloud explosions may exist. Neither Congress nor EPA intended the List Rule to capture every substance that may pose a hazard in particular circumstances. Instead, the statute required EPA to select the chemicals posing the greatest risk of serious effects from accidental releases. To implement these criteria, EPA focused primarily on chemicals that posed the most significant hazards because site-specific factors vary too greatly to be considered at the listing stage of regulation. EPA believes the hazards of naturally occurring hydrocarbon mixtures prior to entry into a natural gas processing plant or petroleum refining process unit do not warrant regulation. The general duty clause of section 112(r)(1) would apply when site-specific factors make an unlisted chemical extremely hazardous. Also, the particular risk cited by the commenter probably would be addressed by the RMP Rule even with the exemption as promulgated today. In the case of a chemical facility located adjacent to an oil and gas production facility, the owner or operator of the chemical facility is likely to have processes covered due to other regulated substances and would have to consider site-specific conditions such as the presence of an adjacent oil and gas production facility. Therefore, it is inappropriate to condition this exemption on site-specific factors.

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

To clarify threshold determination for regulated flammable substances in mixtures, EPA is taking final action 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 704-1996.

In its proposed rule, to define NFPA 4, EPA cited and proposed to incorporate by reference NFPA 704, Standard System for the Identification of Fire Hazards of Materials (1990 edition). For the definition and determination of boiling point and flash point, EPA cited and proposed to incorporate by reference NFPA 321, Standard on the Basic Classification of Flammable and Combustible Liquids (1991 edition). In this final rule, EPA is updating these references and incorporating by reference the 1996 edition of NFPA 704 and the 1996 edition of NFPA 30, Flammable and Combustible Liquids Code, which replaces NFPA 321.

Nine comments were submitted supporting this clarification. No opposing comments were submitted.

D. Definition of Stationary Source

EPA is promulgating the amendments to the definition of stationary source that were proposed on April 15, 1996. First, EPA is clarifying that the exemption for regulated substances in transportation, or in storage incident to such transportation, is not limited to pipelines. In addition, EPA is modifying the definition of stationary source to clarify that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. Finally, EPA is modifying 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.

EPA considers the transportation exemption to include storage fields for natural gas where gas taken from pipelines is stored during non-peak periods, to be returned to the pipelines when needed. Such storage fields include, but are not limited to, depleted oil and gas reservoirs, aquifers, mines, and caverns (e.g., salt caverns). For purposes of this regulation, this type of storage is incident to transportation and, therefore, is not subject to the RMP rule. The transportation exemption also applies to liquefied natural gas (LNG) facilities 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. These facilities include those used to liquefy natural or synthetic gas or used to transfer, store, or vaporize LNG in conjunction with pipeline transportation.

EPA believes there still may be potential for confusion regarding the jurisdiction and regulatory responsibility of EPA and DOT for pipelines and for transportation containers at stationary sources. "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, the 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 confusion regarding transportation containers and will coordinate with DOT to ensure that compatible interpretations about regulatory coverage are provided to the regulated community.

EPA received 15 letters in support of the exemption of transportation activities from the definition of stationary source. No one opposed this exemption. A number of commenters, however, believed the modifications would not eliminate overlap and confusion between EPA and DOT rules. A number of commenters also favored exempting from the stationary source definition transportation containers no longer under active shipping papers and transportation containers connected to equipment for purposes of temporary storage, loading, or unloading. Some commenters stated that EPA would be undermining DOT's authority by regulating activities that are under DOT jurisdiction. Four commenters recommended exempting all containers that are suitable for transportation.

EPA developed the transportation exemptions discussed here in consultation with DOT. EPA's regulations do not supersede or limit DOT's authorities and, therefore, are in compliance with CAA section 310. EPA believes these provisions are consistent with other EPA regulations, such as the Emergency Planning and Community

Right-to-Know Act (EPCRA) regulations under parts 355 and 370. EPA disagrees that suitability for transportation should be the criterion for determining whether a container should be considered part of the stationary source. For example, EPA believes that a railroad tank car containing a regulated substance could be considered a stationary source or part of a stationary source, even though the tank car is "suitable for transportation." Such a tank car could remain at one location for a long period of time, serving as a storage container, and could pose a hazard to the community. EPA considers a container to be in transportation as long as it is attached to the motive power that delivered it to the site (e.g., a truck or locomotive). If a container remains attached to the motive power that delivered it to the site, even if a facility accepts delivery, it would be in transportation, and the contents would not be subject to threshold determination. As stated earlier, EPA will continue to work with DOT to avoid regulatory confusion.

EPA agrees with commenters who stated that active shipping papers may not be a suitable criterion for determining whether a container is in transportation. EPA is aware that shipping papers are not always generated, nor are they required under DOT rules. Therefore, EPA has modified the definition of stationary source to remove the reference to active shipping papers. EPA also has modified the definition to remove the reference to temporary storage. This reference may have been confused with storage incident to transportation.

EPA has received questions regarding the statement in the stationary source definition that properties shall not be considered contiguous solely because of a railroad or gas pipeline right-of-way. In response to these questions, EPA is clarifying this statement by deleting the word "gas." EPA always intended that neither a railroad right-of-way nor any pipeline right-of-way should cause properties to be considered contiguous.

E. Applicability to Outer Continental Shelf

EPA is providing an applicability exception for sources on the outer continental shelf (OCS sources) to clarify that Part 68 does not apply to these sources. This 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. Eleven commenters supported this exception, and no one opposed it.

III. Summary of Revisions to the Rule

EPA is amending several sections of part 68 of title 40 of the Code of Federal Regulations.

In § 68.3, the definition of stationary source is revised. The revised definition specifically states that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. The definition states that exempt transportation includes, but is not limited to, transportation activities subject to oversight or regulation 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. In addition, the agency has made non-substantive wording changes to improve the clarity of this definition.

Several new definitions are added for § 68.3, for condensate, crude oil, field gas, natural gas processing plant, petroleum refining process unit, and produced water.

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

Several revisions are made to § 68.115 on threshold determination. Section 68.115(b)(2) is 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 modification to § 68.115(b)(2) exempts 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 exempt from threshold determination. Section 68.115(b)(3), on concentrations of a regulated explosive substance in a mixture, is deleted, and §§ 68.115(b)(4), 68.115(b)(5), and 68.115(b)(6) are redesignated as §§ 68.115(b)(3), 68.115(b)(4), and 68.115(b)(5), respectively.

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

IV. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the

actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

V. Required Analyses

A. Executive Order 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, competition, 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 that this 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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant negative economic impact on a substantial number of small entities. This final rule will not have a significant negative impact on a substantial number of small entities because it reduces the number of substances that would be used to identify stationary sources for regulation and provides exemptions that will reduce the number of stationary sources subject to the accidental release prevention requirements.

C. Paperwork Reduction

This rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule will reduce the number of sources subject to part 68. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might

significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), the Agency is required 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, business practice, etc.) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA developed its list of regulated flammable substances for this rule based on analysis of the hazards of flammable substances conducted in a review of the EPCRA section 302 list. As part of this analysis, EPA identified and evaluated existing listing and classification systems, including listing and classification systems developed for voluntary consensus standards. This final rule incorporates, by reference, the use of a voluntary consensus standard to identify the chemicals which are covered according to their flammability, namely NFPA 704, "Standard System for the Identification of the Hazards of Materials for Emergency Response." EPA identified no other potentially applicable voluntary consensus standards.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention, Clean Air Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 18, 1997.

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 amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

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

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661-7661f.

Subpart A—General

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

§ 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.

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Crude oil means any naturally occurring, unrefined petroleum liquid.

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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, classified as North American Industrial Classification System (NAICS) code 211112 (previously Standard Industrial Classification (SIC) code 1321).

* * * * *

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in NAICS code 32411 for petroleum refining (formerly SIC code 2911) and used for the following: Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants; Separating petroleum; or 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. 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. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. 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. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.

* * * * *

3. Section 68.10 is amended by adding a paragraph (f) to read as follows:

§ 68.10 Applicability.

* * * * *

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

Subpart F—Regulated Substances for Accidental Release Prevention

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

§ 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 Hazards of Materials for Emergency Response, National Fire Protection Association, Quincy, MA, 1996. 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. Boiling point and flash point shall be defined and determined in accordance with NFPA 30, Flammable and Combustible Liquids Code, National Fire Protection Association, Quincy, MA, 1996. 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. 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 § 68.3 of this part.

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§ 68.130 [Amended]

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

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