ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6350–9]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Flammable Hydrocarbon Fuel Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to modify the rule listing regulated substances and threshold quantities for the Risk Management Program (RMP) issued under section 112(r) of the Clean Air Act as amended. EPA is proposing that a process containing 67,000 pounds or less of a listed flammable hydrocarbon fuel, and no other listed substance above its threshold quantity, be exempt from threshold quantity determination. The exemption will not apply to processes that manufacture the fuel, contain more than a threshold quantity of another (non-fuel) regulated substance, or processes connected to, or collocated with, another covered process at the facility. EPA believes this proposed change will exempt from RMP coverage numerous small fuel users (e.g., farms, restaurants, hotels, etc.) that were not intended to be subject to the RMP requirements and better focus accident prevention activities on stationary source operations that present a greater risk to the community.

DATES: *Comments.* Comments must be submitted on or before June 28, 1999 unless a hearing is requested by June 2, 1999. If a hearing is requested, written comments must be received by July 12, 1999.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than June 2, 1999. If a hearing is held, it will take place on June 14, 1999 at 9:30 am, at the location indicated below.

ADDRESSES: *Comments.* Comments should be mailed or submitted to: Environmental Protection Agency, Air Docket (6102), Attn: Docket No. A–99–18, 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 James Belke (see **FOR FURTHER INFORMATION CONTACT**).

Docket. The docket for this rulemaking is A–99–18. 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: James Belke, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 401 M St. SW (5104), Washington, DC 20460, (202) 260–7314.

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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 (CAA or Act) as amended (42 U.S.C. 7412(r) and 7601).

B. Background

CAA section 112(r) contains requirements related to the prevention and mitigation of accidental chemical releases. The accidental release provisions focus on those chemicals and operations that pose the greatest risk to public health and the environment in the event of an accidental release. The CAA requires EPA to issue 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, and specifies the factors to be considered in listing other substances, including (1) the severity of acute adverse health effects associated with accidental releases of the substance, (2) the likelihood of accidental releases of the substance, and (3) 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, the factors 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 issued under CAA section 112(r)(7), including the requirement to develop a risk management program.

EPA issued the rule listing substances and thresholds on January 31, 1994 (59 FR 4478) (the ''List Rule''). The List Rule was modified on August 25, 1997 (62 FR 45129) and again on January 6, 1998 (63 FR 639). EPA sought comment on a proposed accident prevention (''risk management program'' or ''RMP'') rule in two notices and promulgated a final rule on June 20, 1996. (See 58 FR 54190, October 20, 1993; 60 FR 13526, March 13, 1995 and 61 FR 31668, June 20, 1996.) EPA proposed modifications to the risk management program rule on April 17, 1998 (63 FR 19216) and finalized these amendments on January 6, 1999 (64 FR 964). 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 final List Rule published on January 31, 1994, 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. EPA first modified the list on

August 25, 1997 (62 FR 45129) by de-listing hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. EPA further modified the list on January 6, 1998 (63 FR 639) by deleting the category of Division 1.1 explosives, exempting from threshold quantity determination regulated substances in gasoline used as fuel and in naturally occurring hydrocarbon mixtures prior to processing, and clarifying the determination of threshold quantity of flammable substance in a mixture.

The List 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. The rule sets forth the procedures for determining whether a threshold quantity of a regulated substance is present at a stationary source in a process. Specific exemptions from the threshold determination are also included for mixtures, articles, and certain uses and activities. The rule also outlines the requirements for petitions to the Agency to add substances to, or delete substances from, the list.

In developing the list, 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 of 1986 (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 have caused injuries to the public and damage to the environment, EPA also included highly flammable gases and liquids on the list.

At the time the List Rule was promulgated, EPA published a supplemental notice seeking comment on a proposal to exempt flammable substances from the 10,000-pound threshold determination when used solely for facility consumption as fuel (see 59 FR 4500, January 31, 1994). EPA sought additional public comment on the hazards associated with listed flammable substances used as fuel and the appropriateness of the proposed exemption. Based on available information and the comments received, EPA decided not to exempt from the threshold quantity determination flammable substances when used as fuel. This decision was described in the final Risk Management Program rule promulgated on June 20, 1996 (61 FR 31668).

D. Related Litigation

Several legal challenges were brought to the RMP rule, including one by the National Propane Gas Association (NPGA). At NPGA's request, the U.S. Court of Appeals for the District of Columbia Circuit recently entered a temporary stay of the RMP rule as it applies to propane [The Chlorine Institute, Inc. v. Environmental Protection Agency, 96–1279 and consolidated cases (Nos. 96–1284, 96–1288, and 96–1290), Order of April 27, 1999]. Until further order of the Court, the RMP rule is not in effect with respect to propane. Any stationary source, or process at a stationary source, subject to the RMP rule only by virtue of propane is not, until further notice, subject to the RMP rule requirements, including those calling for a hazard assessment, accident prevention program, emergency response planning, and submission of (or inclusion in) an RMP by June 21, 1999.

EPA understands the Court's order granting a temporary stay as reaching not only propane in its pure form, but propane mixtures commonly sold as liquefied petroleum gas. The pleadings considered by the Court in entering its stay did not distinguish between pure propane and mixtures commonly sold as ''propane.'' Accordingly, EPA believes the Court's order should not be read as making such a distinction.

It is important to note that the terms of the Court's stay are different in several respects from those of the exemption being proposed today. The Court's stay applies only to propane, while today's exemption would apply to all flammable hydrocarbon fuels, including propane. The Court's stay includes no upper quantity limit or conditions; today's exemption as proposed includes an upper quantity limit and other conditions for eligibility. Finally, the Court's stay will last until further order of the Court. The proposed exemption, if made final, will be permanent. If the Court lifts its stay at some point in the future, propane, along with the other flammable hydrocarbon fuels, would be exempt from the RMP rule in accordance with the terms of the exemption, unless the exemption is not finalized.

II. Discussion of Proposed Modifications and Alternatives

After promulgating the List and RMP rules, EPA became aware that a significant number of small, commercial sources use regulated flammable substances, particularly propane, as fuel (e.g., for heating, drying, powering motor vehicles, etc.) in quantities that exceed the applicable threshold quantity (10,000 pounds in a process). As a result, these small sources, including farms, restaurants, hotels, and other commercial operations are covered by the RMP requirements. Many of these sources are in rural locations where other fuel sources (e.g., natural gas) are not available or economical.

The Agency has reexamined whether such sources should be covered by the RMP rule given the relatively small and better known risk they present to their surroundings. As explained in more detail below, EPA believes that fuel use generally does not warrant the detailed prevention program required by the RMP regulation. However, EPA believes that fuel held in large enough quantities still poses a level of risk which warrants a detailed prevention program (including the submission of a risk management plan). While, as EPA previously concluded in the List rule, listed fuels are extremely hazardous and warrant continued listing, the Agency is proposing to exempt processes containing these substances from the RMP requirements when stored in quantities not exceeding 67,000 pounds in a process, because of the decreased risk associated with fuel use.

As noted above, EPA had previously proposed a fuel use exemption, but subsequently decided against it. In considering the original exemption proposal, EPA focused primarily on the inherent hazards of the listed substances when used as fuel. EPA sought but could not locate, and did not receive from commenters, data or information which indicated that the inherently hazardous characteristics of a flammable substance (e.g., flammability, combustibility, volatility, etc.) were any different when that substance was used for fuel. EPA noted that differences in handling and use as well as application of industry safety standards could affect the risk of an accident, but stated that covered sources could take these and other relevant factors into account in developing their risk management programs. Viewed from this perspective, EPA found no basis for granting an exemption.

However, EPA did not fully realize the extent to which listed fuels (particularly propane) are used over threshold quantities in simple processes for heating or drying, mostly in open or rural settings. Concerns raised after the RMP rule was issued led EPA to further investigate the nature and number of sources subject to the rule by virtue of their use of fuel in simple processes.

The Agency had originally projected that, for example, no more than approximately 300 farms would be subject to the rule, but has since estimated that approximately 5,300 such sources are subject to RMP requirements (see section IV.H of this preamble). In light of the purpose of section 112(r)—to focus comprehensive accident prevention requirements on the most potentially dangerous sources—EPA believes that farms and other small fuel users may not warrant federal RMP regulation and that it is appropriate to reconsider this issue.

EPA now believes that relatively small amounts of listed flammable substances (including amounts in excess of 10,000 pounds), when used as fuel, generally do not present sufficient threat to the offsite public to warrant regulation under the RMP program, provided certain conditions are met as described below. EPA has considerable accident data on propane that shows that while accidental releases of small quantities of listed fuel substances certainly can and sometimes do result in significant on-site property damage and/or injuries to workers, they usually do not cause significant offsite impacts. Further, local fire departments are generally well aware of the location and hazards associated with flammable fuels and are equipped to effectively respond to and mitigate emergencies.

EPA is therefore proposing to exempt certain quantities of listed flammable hydrocarbons when used as fuel from RMP requirements because the Agency believes this will better focus accident prevention efforts on those stationary sources with high hazard operations. Today's proposal notwithstanding, owners and operators of facilities where exempt fuels are handled still have a general duty under section 112(r)(1) of the CAA to understand the hazards of their chemicals and processes, design, maintain, and operate a safe facility, and take steps to mitigate the consequences of accidents that do occur.

There are several characteristics associated with listed flammable hydrocarbons when used as fuel which reduce its potential for catastrophic impacts on the public or environment surrounding its location. Among these, EPA believes that no single characteristic is sufficient to justify an exemption for regulated fuels. However, when taken together, they reduce the risk of regulated fuels enough to justify the proposed exemption. These characteristics generally fall into two categories: characteristics that reduce the likelihood of accidental release, and characteristics that reduce the likelihood that a release will result in severe offsite consequences, particularly vapor cloud explosions. As EPA explained in the List Rule, the Agency selected flammable substances and their threshold quantity based on their potential to cause vapor cloud explosions, which generate blast overpressures that travel much farther from the source than the radiant heat of fires, thus making offsite consequences more likely.

A. Characteristics of Fuel Use That Reduce the Likelihood of Accidental Release

Taken together, processes that are relatively simple, involve little manipulation and handling, are covered by other state or federal regulations, and are separate from other RMP covered processes are generally less likely to undergo a significant accidental release that can harm the public or environment. Fuel-use processes generally have these characteristics, as further explained below.

1. Simple Process

EPA believes that simple processes are generally less likely to suffer accidental releases than complex processes. When compared to the many different types of industrial chemical manufacturing operations at sources covered by the RMP rule, most fuel processes at commercial locations are relatively simple to operate and maintain. The majority of fuel uses of listed flammable hydrocarbons are for comfort heating, space heating, or drying. Typical process configurations involve minimal amounts of equipment (e.g., fuel storage tanks, transfer piping, and fuel burners), and instrumentation and process controls generally are few (perhaps only a thermostat). Complex or exotic equipment is generally not present, startups and shutdowns are usually easy to perform (many homeowners perform similar operations with no special training), and operations are often fairly routine. However, since fuel processes related to fuel manufacturing may be quite complex, EPA proposes not to extend the fuel exemption to processes associated with the manufacture of regulated fuel substances.

2. Little Manipulation and Handling

EPA believes that processes involving little hazardous chemical handling, manipulation, and transfer are generally less prone to accidental releases than processes which involve frequent handling, manipulation, and transfer. Fuel-use processes typically do not involve a lot of manipulation and handling of regulated flammable substances. In most heating fuel processes, fuel storage tanks are filled infrequently (e.g., at monthly or longer intervals). Once a fuel storage tank is filled, fuel substances generally do not undergo numerous changes of state, and processes do not require frequent valving, piping connections and disconnections, or substance transfers into or out of the process. And as discussed above, fuel-use process operations are typically routine, with few start-ups and shut-downs. Although today's proposed exemption contains no explicit criterion which limits the exemption to processes involving little manipulation and handling, and therefore the exemption could be applied to sources (i.e., fuel retailers and distributors) which may not have this characteristic, EPA believes that another explicit criterion for today's exemption (i.e., 67,000 pound upper quantity limit) effectively prevents it from being applied to such sources.

3. Regulated Under State Law

EPA has estimated that the vast majority of fuel-use processes covered by the RMP rule consist of liquefied petroleum gas (principally propane) processes. To a lesser extent, covered fuel-use processes consist of liquefied or gaseous natural gas (methane) processes. The National Fire Protection Association (NFPA) has developed consensus standards for the design, construction, installation, and operation of liquefied petroleum gas and liquefied natural gas systems (i.e., NFPA 58 LP-Gas Code, NFPA 59 Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants, and NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)), and these standards apply to most fuel processes covered by the RMP rule. NFPA Standard 58, the standard applicable to most propane processes covered by the RMP rule, has been incorporated (or substantially equivalent requirements have been incorporated) into regulations in all 50 U.S. states. Although to EPA's knowledge no existing industry standard or state regulation duplicates all of the hazard assessment, accident prevention, emergency response, and information submission requirements of the RMP rule, these standards and regulations do contain some requirements which are either identical or generally consistent with certain RMP requirements. EPA therefore believes that implementation of safety practices required by these NFPA standards and state laws, as applicable, helps to reduce the likelihood of accidental releases at fuel-use processes.

4. Not Near or Combined With Other Regulated Substances or Processes

At the majority of sources eligible for the proposed fuel exemption, the process where the listed flammable substance is used as a fuel is the only covered process at the site and involves no other listed substances. It thus cannot be impacted by any other covered process in a way that could lead to an accidental release. And an accidental release involving the fuel process would not cause the release of another hazardous substance.

However, some facilities may have multiple processes or interconnected operations that use other listed flammable or toxic substances along with a listed flammable hydrocarbon used as fuel. For example, a process heater that uses a listed flammable hydrocarbon substance as fuel in a chemical reaction system handling other RMP listed substances could be adversely affected by a process upset or emergency, leading to a catastrophic fuel release. Conversely, an accident involving the fuel could lead to the secondary release of another substance, with offsite effects potentially equal to or greater than those resulting from release of the fuel itself. To ensure that today's proposed exemption is not inappropriately applied to processes where other regulated substance processes could be involved in an accidental fuel release, EPA proposes not to extend the fuel exemption to cases where the process containing the listed flammable hydrocarbon fuel contains another regulated substance, or is interconnected or collocated with another RMP-covered process.

B. Characteristics of Fuel Use That Reduce the Likelihood of Severe Offsite Consequences

Taken together, there are certain characteristics of the listed flammable hydrocarbons when used as a fuel that serve to reduce the likelihood of offsite consequences, particularly vapor cloud explosions, should an accidental release of the fuel occur. Some of these characteristics also reduce the magnitude of a vapor cloud explosion, should one occur. Specifically, fuel-use processes are typically in a less congested environment, involve small quantities of regulated substances, and use odorants as a means of rapid release detection.

1. Less Congested Environment

EPA's primary concern in listing flammable substances was the possibility that accidental releases of these substances could result in vapor cloud explosions. As noted earlier, vapor cloud explosions generate blast overpressures that travel much further from the source of the explosion than the radiant heat generated by a large fire. Other types of flammable substance accidents, such as boiling liquid expanding vapor explosions (BLEVEs), can also result in severe offsite consequences, but primarily when very large quantities are involved. A vapor cloud explosion of the same quantity involved in a BLEVE generates a far greater impact distance and could potentially affect a larger number of people.

While vapor cloud explosions are infrequent events in general, experimental studies and accident investigations have shown that the likelihood and force of a vapor cloud explosion increase dramatically if flammable vapor is released into a highly congested environment (i.e., containing numerous obstacles, parallel-plane surfaces, and other obstructions). The presence of congestion in the volume occupied by a combusting vapor cloud creates turbulence in the vapor cloud, and turbulence is a necessary condition for blast overpressure to be generated in a combusting vapor cloud (factors other than physical congestion can also result in blast-generative turbulence, but congestion is generally the most common factor). Furthermore, greater turbulence (which can be caused by more and denser congestion) can dramatically increase the force of an explosion. Vapor clouds that ignite without turbulence generally burn, resulting in a flash fire or fireball, but do not explode.

The influence of congestion in the dynamics of vapor cloud explosions causes certain sources to be more susceptible to vapor cloud explosions than others. Sources such as petroleum refineries are often highly congested and therefore may present conditions conducive to a vapor cloud explosion should an accidental flammable vapor release occur. Small fuel-use sources, on the other hand, are generally not highly congested. Consequently, accidental releases from fuel-use processes are not as likely to result in vapor cloud explosions. Furthermore, if an accidental release at a fuel-use source does result in a vapor cloud explosion, the explosion is likely to be less powerful than that resulting from a similar release at a refinery or petrochemical plant.

2. Small Quantities

Studies have shown that small hydrocarbon vapor clouds, even if they ignite, are not likely to explode. The probability of a vapor cloud explosion increases with the size of the vapor cloud. The great majority of fuel-use processes contain relatively small quantities of regulated fuels. Typical fuel-use situations involve 500- or 1000-gallon propane tanks, either individually or in multiple tank configurations. For this reason, the potential size of an accidental release from a fuel-use process, even a release consisting of the entire quantity of the process, is generally likely to be relatively small in relation to the amount of fuel necessary to generate a large vapor cloud.

When establishing the threshold quantity for listed flammable substances, EPA was aware that certain sources were more susceptible to vapor cloud explosions than others, and the Agency therefore used conservative modeling assumptions in setting that threshold. These assumptions were necessary in order to accommodate the full range of covered sources, including sources such as petroleum refineries where large quantities of regulated flammable substances may be held in environments and under conditions conducive to vapor cloud explosions. However, EPA believes, for reasons stated above, that these assumptions are overly conservative for most fuel use situations. EPA believes that a fuel-use source can store significantly more than 10,000 pounds of fuel in a process without the threat of significant offsite impacts from accidental releases.

Historically, flammable substance accidents with significant offsite impacts have involved either vapor cloud explosions at refineries and chemical plants, or BLEVE's at sources storing large quantities of flammable substances. In terms of loss of life, perhaps the most severe flammable substance accident ever at a stationary source occurred at an LP-gas terminal in Mexico City where nearly 4 million gallons of liquefied petroleum gas were stored. The accident involved the BLEVE or rupture of 48 large LP-gas storage containers, and reportedly resulted in more than 600 fatalities, most of whom were members of the offsite public. Other accidents with offsite impacts have occurred at fuel distribution sources in the United States and other countries where quantities of fuel much smaller than the quantity involved in the Mexico City accident were stored. In view of the large amount of fuel stored at fuel distribution facilities, as well as the frequent handling and transfer involved in fuel distribution, EPA believes that these facilities generally pose a significant risk of offsite consequences.

EPA proposes to establish the upper limit for the fuel exemption at 67,000 pounds, which is approximately the maximum amount, expressed in pounds, of liquefied petroleum gas normally stored in a standard 18,000 gallon propane tank (i.e., according to NFPA Standard 58, an 18,000 gallon propane tank may be filled to a maximum of 88% of nominal water capacity at 60°F). This proposed upper limit on the fuel exemption acknowledges the fact that even in environments not conducive to vapor cloud explosions, such events can still occur if a sufficient quantity of flammable vapor is released.

EPA derived this number in two steps. First, EPA used blast modeling methods to determine the amount of fuel necessary to result in a vapor cloud explosion that could cause potentially lethal effects on people from the indirect effects of an explosion at a distance of 100 meters from the source. In performing this analysis, EPA used TNT-equivalent and multi-energy blast modeling approaches. For TNT-equivalent modeling, EPA evaluated values for blast yield factor and flash fraction that the Agency considers to be representative of typical fuel-use situations. EPA evaluated blast yield factors ranging from one to three percent and determined flash fraction on the basis of actual thermodynamic data. The Agency also reviewed case studies relevant to the proposed exemption. Next, since the majority of fuel-use processes covered under the RMP rule contain propane, EPA reviewed the sizes of widely-used propane tanks, and set the proposed exemption limit to coincide with the tank size which best represented the range of quantities derived using blast modeling. Additional technical background information and calculations used to derive the proposed exemption limit are available for review at the docket for this rulemaking (see **ADDRESSES**).

EPA believes that 67,000 pounds represents a reasonable upper limit for the exemption, and believes that this limit is consistent with accident history, which indicates that flammable substance accidents with the most serious offsite impacts generally have occurred at sources storing large quantities of flammable substances for manufacturing, distribution or resale. The 67,000 pound upper quantity limit should also distinguish between fuel users and distributors. As noted earlier, fuel distribution involves very frequent transfer and handling that make accidental releases more likely. Based on available information, EPA believes that a 67,000 pound upper quantity limit would exclude the vast majority of fuel distributors from eligibility for the proposed exemption. EPA requests comment on this approach, the proposed upper quantity limit for the exemption, related accident data, and whether an upper limit is necessary. Is relevant accident data available that the Agency may not have considered? Should EPA consider a different limit? If so, what would be the basis for that limit? Should EPA express the upper limit in terms of tank capacity (i.e., 18,000 gallons) instead of quantity in a process (i.e., 67,000 pounds)? Commenters are encouraged to provide supporting methodology for any other limit proposed, as well as accident data if available.

3. Fuels Are Odorized

The final characteristic of flammable hydrocarbon fuels that reduces the likelihood and/or magnitude of offsite consequences resulting from accidental releases is the fact that most regulated flammable fuel substances are odorized. The most commonly used fuel substances covered by the RMP rule, propane and methane, have no natural odor. An odorant is generally added to these fuels as a warning agent such that the gases are detectable, by a distinct odor, well below the lower limit of flammability. EPA believes that the presence of the odorant increases the likelihood that accidental fuel releases can be detected and stopped or mitigated before the release generates sufficient vapor to cause a vapor cloud explosion or results in other significant offsite impacts. Furthermore, even if the release itself cannot be halted or mitigated, the presence of the warning odor may allow the public to evacuate to a safe distance from a fuel release. EPA recognizes that the presence of a warning odor, by itself, is not effective in every circumstance, and even if the odor is detected, human intervention is often still required to stop or mitigate an accidental release. Nevertheless, EPA believes that accidental releases of odorized fuels are often likely to be less severe, either in terms of the quantity released or its consequences, or both, than accidental releases of non-odorized flammable substances. EPA requests comment on this issue as it relates to other listed flammable hydrocarbon substances used as fuel that are not odorized.

EPA requests comment on the preceding characteristics and whether they are appropriate as the bases for today's proposed exemption.

C. Alternative Approaches

While EPA believes that today's proposed exemption would effectively exempt only those fuel using sources that present little risk to the offsite public, the Agency requests comment on whether alternative approaches might better serve this purpose. Specifically, EPA requests comment on the following alternative approaches:

1. Restrict Exemption to Processes Where Flammable Substances are Used On-site as Fuel; No Upper Quantity Limit on Exemption

The approach proposed today is based on the analysis above, which indicates that fuel-use processes pose lower risk than other covered processes, so long as the quantity of fuel in the process does not exceed 67,000 pounds. However, for the sake of administrative simplicity, both for the regulated sources and the regulating agency (including state implementing agencies), EPA is not proposing to include fuel-use as an eligibility criterion for the exemption. EPA's data show that relatively few sources that store fuel for other than on-site use (e.g. fuel distributors and retailers) hold quantities of 67,000 pounds or less in a process. And, to the extent that such sources exist, they are often in relatively remote locations, serving as small depots to rural customers. The Agency thus believes that a fuel-use criterion is probably unnecessary to assure proper application of the proposed exemption.

Nevertheless, the first alternative to today's approach would restrict the exemption to only those sources where the presence of the fuel is only for actual on-site consumption. This alternative is virtually identical to the fuel-use exemption provided by OSHA under 29 CFR part 1910, Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents. Under the OSHA exemption (and this alternative to today's approach), no upper quantity limit restricts its applicability. In consideration of the aforementioned factors which differentiate fuel use from other flammable substance uses (or other factors that the Agency may not have considered), EPA requests comments on whether or not this alternative to the proposed exemption better accomplishes its stated purpose (i.e., to exempt from RMP coverage numerous small fuel users and better focus accident prevention activities on stationary source operations that present a greater risk to the community).

2. Restrict Exemption to Processes Where Flammable Substances Are Consumed On-site as Fuel; Retain Upper Quantity Limit on Exemption

This alternative is identical to the first alternative, but retains the upper quantity limit on applicability for the exemption. This would ensure that the exemption would not be applied at sources that consume very large quantities of fuel on-site. As previously indicated, EPA believes that even in fuel-use situations that are less susceptible to vapor cloud explosions, such events can still occur if a sufficient quantity of fuel is released. In consideration of the factors which differentiate fuel use from other flammable substance uses, EPA requests comments on whether or not this alternative to the proposed exemption better accomplishes its stated purpose.

3. Restrict Exemption to Regulated Substances in Liquefied Petroleum Gas and/or Natural Gas

In EPA's view, an important justification for providing a fuel exemption is that in the event of an accidental release of a small quantity of fuel (less than 67,000 pounds), significant offsite consequences are not likely. In deriving the proposed 67,000 pound upper quantity limit for the exemption, EPA incorporated some modeling assumptions that represent the characteristics of propane, the most widely used listed fuel substance. EPA believes these assumptions are also reasonably conservative when applied to modeling of methane, the primary component of natural gas. However, other listed flammable fuel substances, such as acetylene and propylene, have inherent characteristics for which these assumptions may be unsuitable (e.g., acetylene is much more reactive than propane). EPA believes that such substances are generally not stored for fuel use in quantities approaching 67,000 pounds. Therefore, EPA believes that the proposed exemption does not, as a practical matter, present any unintended additional risk to the public from such substances. However, EPA requests comment on whether or not the proposed exemption, or any of the proposed alternatives, should apply only to regulated substances in liquefied petroleum gas and natural gas, the flammable mixtures for which the exemption is, in large part, specifically intended.

D. Other Issues

Comments are requested on the proposed exemption and alternatives and the other specific issues addressed (e.g., distinguishing characteristics of fuel-use, methodology for determination of upper quantity limit for the proposed exemption, whether or not to restrict the exemption to certain regulated fuel substances, etc.). This rulemaking does not otherwise concern the listing and threshold quantities of flammable substances; comments received on issues outside the scope of today's proposal will not be considered. EPA may conduct final rulemaking on any of today's proposed alternatives without requesting further public comment.

III. Summary of Proposed Revisions to the Rule

EPA is proposing to amend subpart F, § 68.115(b) of title 40 of the Code of Federal Regulations to add a new paragraph (6):

(6) Fuels. Regulated flammable hydrocarbon substances need not be considered in determining whether more than a threshold quantity is present when the substance is intended for use as a fuel and does not exceed 67,000 pounds in a process that is not manufacturing the fuel, does not contain greater than a threshold quantity of another regulated substance, and is not collocated or interconnected to another covered process.''

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because it allows members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The official record for this rulemaking has been established for this rulemaking under Docket No. A–99–18, and is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

B. Public Hearing and Written Comments

A public hearing will be held, if requested, to discuss the proposed amendments in accordance with section 307(d)(5) of the Clean Air Act. If a public hearing is requested and held, the EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. Persons wishing to present oral testimony or to inquire as to whether a hearing is to be held should contact the EPA (see **FOR FURTHER INFORMATION CONTACT**). To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each.

Any member of the public may file a written statement on or before July 12, 1999. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket No. A–99–18. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center.

C. Executive Order 12866

Under Executive Order 12866, [58 **Federal Register** 51,735 (October 4, 1993)] the Agency must determine 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 governments 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 is therefore not subject to OMB review.

D. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal

government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. This rule change does not impose any enforceable duties on these entities. This action proposes changes that will exempt from part 68 requirements certain small fuel users, which may include some sources that are owned and operated by State, local or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Executive Order 13045

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 E.O. 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.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action proposes changes that will exempt certain small fuel users, which may include communities of Indian tribal governments, from part 68 requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Regulatory Flexibility

EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule proposes changes that will exempt many small fuel users from part 68 requirements.

H. Paperwork Reduction

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1656.07) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The Office of Management and Budget (OMB) has approved the information collection requirements (ICR) contained for the RMP rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0144. Under the current approved ICR No. 1656.05, EPA estimated the regulated universe as 69,485 sources with an annualized burden of 1.2 million hours. This revision of the rule reduces reporting burden on small fuel users (hotels, restaurants, farms, etc.), thereby reducing the regulated universe estimated by EPA in the approved ICR No. 1656.05.

EPA originally estimated that 12,500 propane retailers, 16,100 propane users, (see Economic Analysis in support of Final Rule, June 1996, available at EPA's Air Docket, Docket A–91–73) and about 5,300 farms (see ICR No. 1656.05) would be subject to part 68 requirements because they handled more than 10,000 pounds of propane. EPA reviewed data from a number of states and determined that only New Jersey had sufficient data that provided detailed information on propane retailer and users (including farms) and the quantity held. Using these data, EPA estimates that, under the 67,000 pound threshold in this proposed rule, the number of propane retailers would decrease by 10 percent to 11,250, and the number of users would decrease by 83 percent, to 2,700. EPA estimated the percentage of farms exempted under the 67,000 pound threshold by averaging data from New Jersey and North Carolina (data from North Carolina was used to estimate number of farms in the current approved ICR No. 1656.05). The farms would decrease by 85 percent, to 780. Overall, the universe of regulated sources under the proposed rule is now estimated to decrease from 69,485 to 50,300.

The public reporting burden will depend on the regulatory program tier into which sources are categorized. The public reporting burden for rule familiarization is estimated to range between 12 to 35 hours per source. The public reporting burden to prepare and submit a new RMP is estimated to take 6.0 hours for retailers to 10.0 hours for non-chemical manufacturers. RMP revisions are estimated to require 3.0 hours for wholesalers to 8.6 hours for chemical manufacturers. The public record keeping burden to maintain on-site documentation is estimated to range

from 2.8 hours for retailers to 279 hours for chemical manufacturers. The public reporting burden for CBI claims is estimated to be 9.5 hours for certain chemical manufacturing sources. In this action, EPA is not providing an exemption to sources that manufacture any of the flammable fuels, therefore, the original estimate for the CBI burden will not be changed with this rule. The public reporting burden for individuals filing petitions to amend the list of regulated substances is estimated to be 138 hours.

EPA estimates (ICR no. 1656.07) that the total annual public reporting burden to become familiar with the rule, complete and submit (or revise) the risk management plan, maintain on-site documentation, substantiate claims for confidential business information, and prepare and submit petitions to amend the list of regulated substances is estimated to be about 1.1 million annual burden hours for the remaining 50,300 sources subject to part 68 under the proposed rule.

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 are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 28, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by June 28, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. 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 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, rather it reduces burden for certain small fuel users. Today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule proposes changes to exempt certain small fuel users which may include small governments.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement 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, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 68

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

Dated: May 21, 1999

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 [AMENDED]

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

Authority: 42 U.S.C. 7412(r), 7601, 7661–7661f.

2. § 68.115 is amended by adding a new paragraph (b)(6) to read as follows:

§ 68.115 Threshold determination.

* * * * *

(b)* * * * *

(6) Fuels. Regulated flammable hydrocarbon substances need not be

considered in determining whether more than a threshold quantity is present when the substance is intended for use as a fuel and does not exceed 67,000 pounds in a process that is not manufacturing the fuel, does not contain greater than a threshold quantity of another regulated substance, and is not collocated or interconnected to another covered process.

* * * * *

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