

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL-5657-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; proposed stay of effectiveness.

SUMMARY: In Part IV of today's Federal Register, the Environmental Protection Agency (EPA) is proposing several modifications to provisions of the rule listing regulated substances and establishing threshold quantities under section 112(r) of the Clean Air Act as amended (List Rule Amendments). The proposed List Rule Amendments, if promulgated in a final rule, would clarify or establish that part 68 does not apply to several types of processes and sources.

This action proposes, pursuant to Clean Air Act section 301(a)(1), 42 U.S.C. 7601(a)(1), to stay the effectiveness of provisions that are affected by the proposed List Rule Amendments in Part IV of today's Federal Register, for so long as necessary to take final action on the proposed List Rule Amendments. Pursuant to the rulemaking provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d), EPA hereby requests public comment on this proposed short-term stay of provisions affected by the proposed List Rule Amendments. Under the proposed stay, owners and operators of processes and sources that EPA has proposed not be subject to part 68 would not become subject to part 68 until EPA has determined whether to proceed with the List Rule Amendments proposed in today's Federal Register.

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

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

ADDRESSES: Comments. Comments should be submitted to: U.S. Environmental Protection Agency, Air Docket (6102), Attn: Docket A-96-08: IV-I (Proposed Stay of Effectiveness), Waterside Mall, 401 M St. SW.,

Washington, DC 20460. Comments must be submitted in duplicate. If a public hearing is held, written testimony must 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, in the EPA Conference Center. Persons interested in attending the hearing or wishing to present oral testimony should notify by telephone Vanessa Rodriguez (see For Further Information Contact).

Docket. All information used in the development of this proposal is contained in the preamble below. However, Docket A-91-74, containing background information for the original List Rule, and Docket A-96-08, containing background information on the proposed List Rule amendments, are available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday at EPA's Air Docket, Room 1500, 401 M St. SW., Washington, DC 20460; telephone (202) 260-7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Vanessa Rodriguez, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5101), 401 M St. SW., Washington, DC 20460, (202) 260-7913.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Elsewhere in the proposed rule section of today's Federal Register, EPA is proposing amendments to regulations in 40 CFR part 68 that, *inter alia*, list regulated substances and establish threshold quantities for the accident prevention provisions under Clean Air Act section 112(r). Readers should refer to that document for a complete discussion of the background of the rule affected. The amendments proposed in that document ("List Rule Amendments") would, if promulgated, delete explosives from the list of regulated substances, modify threshold provisions to exclude flammable substances in gasoline and in naturally occurring hydrocarbon mixtures prior to entry into processing unit or plant, modify the threshold provisions for other flammable mixtures, and clarify the definition of stationary source with respect to transportation, storage incident to transportation, and naturally occurring hydrocarbon reservoirs.

It is unlikely that EPA will be able to take final action on some or all of the proposed List Rule Amendments prior to May 24, 1996, the date on which EPA

anticipates it will take final action on additional "Risk Management Program" regulations under Clean Air Act section 112(r). This action proposes to stay provisions of part 68 that are affected by the proposed List Rule Amendments until such time as EPA takes final action on the proposed List Rule Amendments. If, following consideration of public comment, EPA takes final action to stay the effectiveness of these provisions, these provisions will be stayed until after EPA takes final action on the proposed List Rule Amendments.

EPA is proposing this stay because, at this time, EPA is seeking comment on whether the various processes and sources affected by the proposed List Rule Amendments should be subject to part 68. EPA will need to evaluate comments on the proposed List Rule Amendments before taking final action on that proposal. During the period prior to final action on the List Rule Amendments proposal, owners and operators of sources affected by the proposed List Rule Amendments would not know if they ultimately will be subject to part 68. Such owners and operators should have the same certainty about whether they are subject to part 68 as other owners and operators have when they begin their regulatory compliance planning. The effect of the proposed stay would be to allow owners and operators of processes and sources affected by the proposed List Rule Amendments three years to come into compliance with the Risk Management Program rule in the event EPA fails to adopt the proposed List Rule Amendments. That is, if EPA does not promulgate a provision of the proposed List Rule Amendments, either by taking negative final action or by allowing the stay to expire without final action, owners and operators of processes and sources affected by that provision would need to achieve compliance with the Risk Management Program rule within three years from the date of the negative final action or the expiration of the stay.

II. Required Analyses

A. E.O. 12866

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

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy,

productivity, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

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

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

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

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

B. Regulatory Flexibility Act

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

EPA has examined the proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act. It has determined that this rule will have no adverse effect on small entities because it defers the need for stationary sources to comply with current rule provisions that EPA has proposed to amend; the amendments, if adopted, likely would reduce the number of stationary sources subject to the accidental release prevention requirements. Therefore, I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act

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

D. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 68

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

Dated: April 5, 1996.

Carol M. Browner,
Administrator.

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

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

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

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

2. In Subpart A, § 68.2 is proposed to be added to read as follows:

§ 68.2 Stayed Provisions.

(a) Notwithstanding any other provision of this part, the effectiveness of the following provisions is stayed from March 2, 1994 to (insert date 18 months after publication of final rule in the Federal Register):

(1) In § 68.3, definition of "stationary source," to the extent that such definition includes naturally occurring hydrocarbon reservoirs or transportation subject to oversight or regulation under a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. 60105;

(2) Section 68.115(b)(2) of this part, to the extent that such provision requires an owner or operator to treat as a regulated flammable substance:

(i) Gasoline, when in distribution or related storage for use as fuel for internal combustion engines.

(ii) Naturally occurring hydrocarbon mixtures prior to entry into a petroleum refining process unit or a natural gas processing plant. Naturally occurring hydrocarbon mixtures include any of the following: condensate, crude oil, field gas, and produced water, each as defined in paragraph (b) of this section.

(iii) Other mixtures containing a regulated flammable substance that does not have a National Fire Protection Association flammability hazard rating of 4, the definition of which is in the

NFPA 704, Standard System for the Identification of the Fire Hazards of Materials, National Fire Protection Association, Quincy, MA, 1990. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A-96-08, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. (NOTE: this document will only be available for inspection at the Federal Register after this action becomes a final rule); and

(3) Section 68.130(a).

(b) From March 2, 1994 to (insert date 18 months after publication of final rule in the Federal Register) the following definitions shall apply to the stayed provisions described in paragraph (a) of this section.

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

Crude oil means any naturally occurring, unrefined petroleum liquid.

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

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

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

Examples of such units include, but are not limited to, petroleum based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic

reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

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

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