

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 68**

[FRL-6348-1]

**Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments to the Worst-Case Release Scenario Analysis for Flammable Substances****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is planning to amend the Chemical Accident Prevention Provisions, codified in 40 CFR part 68. The revisions concern the worst-case release scenario analysis for regulated flammable substances, 40 CFR 68.25. These revisions would allow the regulated community to treat regulated flammable substances in the same manner as regulated toxic substances for determining the quantity released when conducting a worst-case release scenario.

Elsewhere in the Final Rule section of today's **Federal Register**, EPA is issuing these revisions as a direct final rule. EPA views this as a noncontroversial revision and anticipates no adverse comment. A detailed rationale for this revision is in the preamble to the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further action is needed on this notice. If EPA receives relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. This action implements a settlement agreement between EPA and the American Petroleum Institute.

As a result of a settlement agreement with the Chlorine Institute, EPA is clarifying its interpretation of Clean Air Act sections 112(l) and 112(r)(11), as they relate to Department of Transportation requirements under the Federal Hazardous Materials Transportation Law.

**DATES:** *Comments.* Comments on the regulations proposed by this action must be received by June 16, 1999, unless a hearing is requested by June 1, 1999. If a hearing is requested, written comments must be received by July 1, 1999.

**ADDRESSES:** *Comments.* All written comments must be identified with the

appropriate docket number (Docket No. A-99-15) and must be submitted to EPA Air Docket, Waterside Mall, Room M1500, 401 M Street, SW, Washington, D.C., 20460, telephone 202-260-7548.

**Public Hearing.** Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should notify the person(s) listed in **FOR FURTHER INFORMATION CONTACT** section.

**Docket.** Docket No. A-99-15, containing supporting information used to develop the proposal, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding Federal holidays at EPA's Air Docket at the above address.

**FOR FURTHER INFORMATION CONTACT:** Sicy Jacob or John Ferris, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 401 M Street SW, Washington, D.C., 20460, (202) 260-7249 or (202) 260-4043, respectively; or the Emergency Planning and Community Right-to-Know Hotline at 800-424-9346 (in the Washington, DC metropolitan area, (703) 412-9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site, at [www.epa.gov/ceppo](http://www.epa.gov/ceppo).

**SUPPLEMENTARY INFORMATION:** In this document, EPA is proposing amendments to the regulations in 40 CFR part 68 for the accident prevention provisions under Clean Air Act section 112 (r), specifically, § 68.25(e), worst-case scenario analysis for flammables. The rule revisions are presented and discussed in detail in a direct final rule published in the Final Rules section of this **Federal Register**.

The chemical accident prevention provisions, also known as the risk management program regulations ("RMP rule") were promulgated on June 20, 1996 (61 FR 31668). Stationary sources subject to the RMP rule are required to submit a risk management plan on their hazard assessment including off-site consequences, accident history, the prevention program and the emergency response program, to EPA by June 21, 1999. Among other requirements, the RMP rule requires covered stationary sources to analyze at least one worst-case release scenario for regulated flammables and at least one for regulated toxic substances that are present in a process at the stationary source above the threshold quantity.

In the final rule issued on June 20, 1996, § 68.25(e) states that when conducting a worst-case scenario analysis for flammables, the owner or operator shall assume that the quantity

of the substance, as determined under paragraph (b) of § 68.25, vaporizes, resulting in a vapor cloud explosion. This approach applies to all listed flammable substances regardless of whether the flammable substance is normally a liquid or liquefied by refrigeration. In litigation filed by the American Petroleum Institute (API), API suggested that flammable liquids and those liquefied by refrigeration should be treated, for modeling purposes, in the same manner as for toxic liquids or those liquefied by refrigeration, as stated in § 68.25 (c) and (d). EPA agreed that flammable liquids (including those liquefied by refrigeration) could be appropriately treated in that manner. EPA is thus proposing these changes to § 68.25.

The proposed revisions would allow stationary sources to model releases of flammable substances in the same manner as toxics. EPA is seeking comment on these proposed revisions. EPA considers these revisions to be noncontroversial and anticipates no adverse comments. If EPA timely receives significant, adverse comments, EPA will publish a document in the **Federal Register** withdrawing the direct final rule. In that event, all public comments received will be treated as comments on this proposed rule and will be addressed in a subsequent final rulemaking document. EPA will not institute a second comment period on this document. Any parties interested in commenting on these revisions should do so at this time.

**I. 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, as well as the public version, has been established for this rulemaking under Docket No. A-99-15, 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. 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 today's action is not a "significant regulatory action" under the terms of E.O. 12866 and is, therefore, not subject to OMB review.

### C. 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. Instead, it merely provides an alternative approach for calculating the quantity released in the worst-case scenario. Stationary sources already subject to the rule may use this approach for conducting worst-case release scenarios for flammable substances in the same manner as toxic substances. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

### D. 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 action is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

### E. 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 rule change merely provides an alternative approach for calculating the quantity released in the worst-case scenario. Stationary sources already subject to the rule may use this approach for conducting worst-case release scenarios for flammable substances in the same manner as toxic substances. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### F. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule and that this rule will not have a significant negative economic impact on small entities. This rule change does not require any stationary source to report additional elements in the risk management plan. It merely provides an alternative approach for stationary sources already subject to the rule to use for conducting worst-case release scenarios for flammable substances. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### G. Paperwork Reduction

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0144.

This rule does not include any new information collection, requirements for OMB review under the provisions of the *Paperwork Reduction Act*. This revision of the rule does not impose any new reporting, recordkeeping, or third party reporting requirements on stationary sources, it merely provides an alternative approach for sources to calculate the quantity released in the worst-case scenario for flammables. The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0144.

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. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

#### *H. 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. Today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. This rule change does not require any stationary sources to report additional elements in the risk

management plan. It merely provides an alternative approach for stationary sources already subject to the rule to use for conducting worst-case release scenarios for flammable substances.

In addition, for the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

#### *I. 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 action 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.

Dated: May 17, 1999.

**Carol M. Browner,**  
*Administrator.*

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