finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)).

As stated previously, we have made such a good cause finding, including the reasons therefore, and established an effective date of March 13, 2000. The EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Recordkeeping and reporting requirements.

Dated: March 2, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart Db—Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

2. Section 60.49b is amended by revising paragraph (s) and adding paragraph (w) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(s) Facility specific nitrogen oxides standard for Cytec Industries Fortier Plant's C.AOG incinerator located in Westwego, Louisiana:

(1) *Definitions.*

Oxidation zone is defined as the portion of the C.AOG incinerator that extends from the inlet of the oxidizing zone combustion air to the outlet gas stack.

Reducing zone is defined as the portion of the C.AOG incinerator that extends from the burner section to the inlet of the oxidizing zone combustion air.

Total inlet air is defined as the total amount of air introduced into the C.AOG incinerator for combustion of natural gas and chemical by-product waste and is equal to the sum of the air flow into the reducing zone and the air flow into the oxidation zone.

(2) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the nitrogen oxides emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When natural gas and chemical by-product waste are simultaneously combusted, the nitrogen oxides emission limit is 289 ng/J (0.67 lb/million Btu) and a maximum of 81 percent of the total inlet air provided for combustion shall be provided to the reducing zone of the C.AOG incinerator.

(3) *Emission monitoring.* (i) The percent of total inlet air provided to the reducing zone shall be determined at least every 15 minutes by measuring the air flow of all the air entering the reducing zone and the air flow of all the air entering the oxidation zone, and compliance with the percentage of total inlet air that is provided to the reducing zone shall be determined on a 3-hour average basis.

(ii) The nitrogen oxides emission limit shall be determined by the compliance and performance test methods and procedures for nitrogen oxides in § 60.46b(i).

(iii) The monitoring of the nitrogen oxides emission limit shall be performed in accordance with § 60.48b.

(4) *Reporting and recordkeeping requirements.* (i) The owner or operator of the C.AOG incinerator shall submit a report on any excursions from the limits required by paragraph (a)(2) of this section to the Administrator with the quarterly report required by paragraph (i) of this section.

(ii) The owner or operator of the C.AOG incinerator shall keep records of the monitoring required by paragraph (a)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner of operator of the C.AOG incinerator shall perform all the applicable reporting and recordkeeping requirements of this section.

* * * * *

(w) The reporting period for the reports required under this subpart is each 6 month period. All reports shall be submitted to the Administrator and shall be postmarked by the 30th day following the end of the reporting period.

[FR Doc. 00–5797 Filed 3–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6550–1]

RIN 2050–AE74

Amendments to the List of Regulated Substances and Thresholds for Accidental Release Prevention; Flammable Substances Used as Fuel or Held for Sale as Fuel at Retail Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying its chemical accident prevention regulations to conform to the fuels provision of the recently enacted Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Pub. L. 106–40). In accordance with the new law, today's rule revises the list of regulated flammable substances to exclude those substances when used as a fuel or held for sale as a fuel at a retail facility. EPA is also announcing there will be no further action on a previous proposal concerning flammable substances, since the new law resolves the issue addressed by the proposal.

DATES: Effective March 13, 2000.

ADDRESSES: Docket. Supporting material used in developing the final rule is contained in Docket No. A–99–36. The docket is available for public inspection and copying between 8:00 am and 5:30 pm, Monday through Friday (except government holidays) at EPA's Air Docket, Room 1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460; phone number: 202–260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Breeda Reilly, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave, NW (5104), Washington, DC 20460, (202) 260–0716.

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I. Introduction and Background

A. Statutory Authority

This rule is being issued under section 112(r) of the Clean Air Act (CAA) as amended by the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (the Act), which President Clinton signed into law on August 5, 1999. Section 2 of the Act immediately removed EPA's authority to ''list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility * * * solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.''

The Act defines ''retail facility'' as ''a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.''

B. Background on Chemical Accident Prevention Regulations

CAA section 112(r) contains requirements for the prevention and mitigation of accidental chemical releases. The focus is on those chemicals that pose the greatest risk to public health and the environment in the event of an accidental release. Section 112(r)(3) mandates that EPA identify at least 100 such chemicals and promulgate a list of ''regulated substances'' with threshold quantities. Section 112(r)(7) directs EPA to issue regulations requiring stationary sources that contain more than a threshold quantity of a regulated substance to develop and implement a risk management program and submit a risk management plan (RMP).

EPA promulgated the initial list of regulated substances on January 31, 1994 (59 FR 4478) (the ''List Rule''). The Agency identified two categories of regulated substances—toxic and flammable—and listed substances accordingly. EPA included 77 chemicals on the toxic substances list based on each chemical's acute toxicity and several other factors—the chemical's physical state, physical/chemical properties and accident history—relevant to the likelihood that an accidental release of the chemical would lead to significant offsite consequences. The Agency also placed 63 substances on the flammable substances list, including vinyl chloride, a substance mandated for listing by Congress. EPA selected chemicals for the flammable substances list based on their flammability rating and the other factors related to likelihood of significant offsite consequences.

Of the originally listed substances, 14 met the criteria for both toxic and flammable substances (arsine, cyanogen chloride, diborane, ethylene oxide, formaldehyde, furan, hydrocyanic acid, hydrogen selenide, hydrogen sulfide, methyl chloride, methyl mercaptan, phosphine, propyleneimine, and propylene oxide). EPA placed these 14 substances on only the toxic substances list, because their toxicity poses the greater threat to human health and the environment.

Following promulgation of the List Rule, EPA issued a rule establishing the accidental release prevention requirements on June 20, 1996 (61 FR 31668) (''the RMP Rule''). Together these rules are codified at 40 CFR part 68.

In accordance with section 112(r)(7), the RMP rule requires that any stationary source with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program and submit an RMP describing the source's program as well as its five-year accident history and potential offsite consequences. The rule further provides that RMPs be submitted by June 21, 1999 for sources with more than a threshold quantity of a regulated substance in a process by that date, or within a specified time of the source first exceeding the applicable threshold.

EPA has amended the List and RMP Rules several times. On August 25, 1997 (62 FR 45132), EPA amended the List Rule to change the listed concentration of hydrochloric acid. On January 6, 1998 (63 FR 640), EPA again amended the List Rule to delist Division 1.1 explosives (classified by the Department of Transportation (DOT)), to clarify certain provisions related to regulated flammable substances, and to clarify the transportation exemption. EPA amended the RMP Rule on January 6, 1999 (64 FR 964) to add several mandatory and optional RMP data elements, to establish procedures for protecting confidential business information, to adopt a new industry classification system and to make technical corrections and clarifications. EPA also amended the RMP Rule on May 26, 1999 (64 FR 28696) to modify the requirements for conducting worst case release scenario analyses for flammable substances and to clarify its interpretation of CAA sections 112(1) and 112(r)(11) as they relate to DOT requirements under the Federal Hazardous Transportation Law.

II. Discussion of Modification

A. Affected Substances

The new Act provides that EPA shall not list a flammable substance when used as a fuel,[1] or held for sale as a fuel at a retail facility solely because of its explosive or flammable properties, except under certain circumstances. The purpose of today's rule is to revise the List Rule as needed to conform to the Act.

As described above, the List Rule currently contains two lists—one of toxic substances and one of flammable substances. The toxic substances list contains those chemicals that meet the criteria listing as toxic substances, even if they also meet the criteria for listing as flammable substances. Accordingly, every chemical on the toxic substances list was listed for its toxicity at least and not solely because of its explosive or flammable properties. The substances on the toxics list are thus not affected by the new Act.

The substances on the flammables list, on the other hand, are listed ''solely'' because they meet a certain flammability rating, taking other risk factors into account. In deciding what flammable substances to list, EPA concentrated on those substances that have the potential to result in significant offsite consequences. Accidents involving flammable substances may lead to vapor cloud explosions, vapor cloud fires, boiling liquid expanding vapor explosions (BLEVEs), pool fires, and jet fires, depending on the type of substance involved and the

[1] EPA has received a number of questions as to whether the fuel use exclusion is available only to retail facilities. EPA believes that the statute and legislative history are clear that the fuel use exclusion is available to any facility that uses a flammable substance as a fuel.

circumstances of the accident. Historically, flammable substance accidents having significant offsite impacts involved either vapor cloud explosions at refineries and chemical plants, or BLEVEs at sources storing large quantities of flammable substances. Vapor cloud explosions produce blast waves that potentially can cause offsite damage and kill or injure people. High overpressure levels can cause death or injury as a direct result of an a explosion; such effects generally occur close to the site of an explosion. People can also be killed or injured because of indirect effects of the blast (*e.g.,* collapse of buildings, flying glass or debris); these effects can occur farther from the site of the blast.

By contrast, the effects of vapor cloud fires, in which the vapor cloud burns but does not explode, are limited primarily to the area covered by the burning cloud. BLEVEs, which generally involve the rupture of a container, can cause container fragments to be thrown substantial distances; such fragments have the potential to cause damage and injury.

Thermal radiation is the primary hazard of pool and jet fires. The potential effects of thermal radiation generally do not extend for as great a distance as those of blast waves and are related to the duration of exposure; people at some distance from a fire would likely be able to escape.

Based on this analysis and available accident history data, the Agency concluded that vapor cloud explosions and BLEVEs pose the greatest potential hazard from flammable substances to the public and environment. For purposes of the List Rule, EPA consequently focused on those chemicals with the potential to result in vapor cloud explosions or BLEVEs in the event of an accidental release. The Agency determined that chemicals meeting the highest flammability rating of the National Fire Protection Agency (NFPA) had this potential and used that rating as the principal criterion for including chemicals on the flammable substances list.

The other factors EPA considered in listing flammable substances—physical state, physical/chemical properties and accident history—all relate to a chemical's potential to be accidentally released in a way that could lead to a vapor cloud explosion or BLEVE. In short, the Agency included chemicals on the flammable substances list ''solely'' because of their explosive potential, a basis now disallowed by the new Act for flammable substances when used as a fuel or held for sale as a fuel at a retail facility.

The new Act nevertheless allows EPA to list a flammable substance when used as a fuel, or held for sale as a fuel where a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance or its combustion byproducts. EPA believes, however, that no listed substances on the flammable substances list is a candidate for this exception. As noted above, flammable substances that meet the listing criteria for toxic substances are on the toxic substances list only. Therefore, none of the chemicals on the flammable substances list will qualify for the exception based on acute health effects from exposure to the substance itself.

Further, combustion byproducts are generally not relevant to listing flammable substances. For hydrocarbons, including the listed flammable substances commonly used as fuels, typical combustion products include water vapor, carbon dioxide, carbon monoxide, and relatively small amounts of other oxidized inorganic substances and do not meet the listing criteria for toxic substances. Several other listed flammable substances may result in combustion byproducts that meet the listing criteria for toxic substances, but these substances are not commonly used as fuels. Further, any toxic combustion byproducts will be a fraction of the total mass and not likely to exceed the applicable threshold for coverage by the RMP rule. Quantities below the threshold are unlikely to have significant offsite consequences.

For these reasons, EPA believes that none of the listed flammable substances meet the new statute's test for listing fuels. Consequently, all of the listed flammable substances are potentially affected by the Act.

B. Use or Sale as a Fuel

The Act prohibits the listing of flammable substances ''when used as a fuel or held for sale as a fuel at a retail facility.'' In limiting EPA's authority to list flammable substances used as a fuel, or sold as a fuel at retail facilities, Congress sought greater consistency between the RMP program and the Process Safety Management (PSM) Standard implemented by the Occupational Health and Safety Administration (OSHA). OSHA's PSM Standard is the workplace counterpart of EPA's RMP program. PSM requirements protect workers from accidental releases of highly hazardous substances in the workplace, while the RMP rule protects the public and environment from the offsite consequences of those releases.

The PSM and RMP programs are similar in many ways, covering mostly the same chemicals. Establishments subject to the PSM Standard must comply with the prevention program requirements which are the same as the RMP rule's Program 3 requirements (subpart D of the Part 68 regulations). However, OSHA provides an exemption from the PSM Standard for hydrocarbon fuels used solely for workplace consumption as a fuel (*e.g.,* propane used for comfort heating), if such fuels are not part of a process containing another highly hazardous chemical covered by the standard. It also exempts such substances when sold by retail facilities.

The two prongs of the limitation on EPA's authority to list flammable substances (*i.e.,* use as a fuel or held for sale as a fuel by a retail facility) largely follow the OSHA exemptions relating to fuel. EPA will therefore look to OSHA precedent and coordinate with OSHA in interpreting and applying the limitations to the extent they parallel OSHA's exemptions. For example, the new Act does not define the term ''fuel,'' but OSHA has given ''fuel'' its ordinary meaning in applying the PSM fuel-related exemptions. Webster's Ninth New Collegiate Dictionary (1990) defines fuel as ''a material used to produce heat or power by burning,'' and EPA has no reason to believe that ''fuel'' as used by the new Act should be defined differently.

Using the ordinary meaning of fuel, EPA reviewed the chemicals on its flammable substances list to determine which are used as fuel. Several of the listed substances are typically used as fuel, including propane, liquified petroleum gas (propane and/or butane often with small amounts of propylene and butylene); hydrogen; and gaseous natural gas (methane). EPA is aware of the possibility of other flammable substances being used as a fuel in particular circumstances. The following is a list of regulated flammable substances that EPA believes have been used as a fuel.

TABLE 1.—LIST OF COMMON FUELS

Chemical name	CAS No.
Acetylene [Ethyne]	74–86–2
Butane	106–97–8
1-Butene	106–98–9
2-Butene	107–01–7
Butene	25167–67–3
2-Butene-cis	590–18–1
2-Butene-trans [2-Butene, (E)]	624–64–6
Ethane	74–84–0
Ethylene [Ethene]	74–85–1
Hydrogen	1333–74–0

TABLE 1.—LIST OF COMMON FUELS—Continued

Chemical name	CAS No.
Isobutane [Propane, 2-methyl-]	75–28–5
Isopentane [Butane, 2-methyl-]	78–78–4
Methane	74–82–8
Pentane	109–66–0
1-Pentene	109–67–1
2-Pentene, (E)-	646–04–8
2-Pentene, (Z)-	627–20–3
Propane	74–98–6
Propylene	115–07–1

At the same time, all of the substances listed above are sometimes used as feedstock chemicals instead of fuel. Further, every listed flammable substance has the potential to be used as fuel, since it may be burned to create heat or power. Consequently, the List Rule cannot be conformed to the new law by deleting particular chemicals from the flammable substances list. Instead, EPA has added a provision to part 68, Subpart F (listing regulated substances) that excludes flammable substances when used as a fuel, or held for sale as a fuel at a retail facility from the list of regulated substances. The Agency has also annotated both versions of the flammable substances list (one version lists the substances alphabetically, the other by Chemical Abstract Service (CAS) number) to indicate that any flammable substance, when used as a fuel, or held for sale as a fuel at a retail facility, is excluded from the list.

As previously mentioned, the Act defines a ''retail facility'' as a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program. The income test portion of the definition follows the definition of ''retail facility'' used by the OSHA in enforcing its PSM Standard (OSHA Directive CPL2–2.45A CH–1-Process Safety Management of Highly Hazardous Chemicals—Compliance Guidelines and Enforcement Procedures): ''an establishment that would otherwise be subject to the PSM standard at which more than half of the income is obtained from direct sales to end users.''

The effect of the income test portion of the new Act's retail facility definition is to provide relief to the same facilities that qualify for OSHA's retail facility exemption, and conversely, to require facilities that do not quality for OSHA's exemption, and thus are subject to the PSM program, to also be subject to the RMP program, provided no other exemption applies. EPA will consequently coordinate its interpretation and application of the income test portion of the retail facility definition with OSHA.

The second portion of the retail facility definition—concerning cylinder exchange programs—goes beyond that developed by OSHA and so provides greater relief than the OSHA retail facility exemption. In general, cylinder exchange programs represent a link between major retailers (for example, hardware stores, home centers and convenience stores) and propane distributors. The retailer typically provides space outdoors and manages transactions with end users such as homeowners; the propane distributor typically provides racks, filled cylinders, promotional materials, and training to the retailer's employees. Propane distributors may have several markets, including cylinder exchange; temporary heat during construction; commercial cooking, heating, and water heating; fuel to power vehicles, forklifts, and tractors; agricultural drying and heating; and others.

For propane or other fuel distributors which meet the definition of retail facility through either direct sales to end users or a cylinder exchange program, the fuel they hold is no longer covered by the RMP rule. For propane or other fuel distributors that do not meet the definition, the fuel they hold is *not* exempted from the RMP rule by the new law or today's action. EPA has added to part 68 a definition of ''retail facility'' that mirrors the statutory definition.

III. Previous Actions Related to Fuels

A. Previous Proposed Rule and Administrative Stay

After promulgating the RMP rule, EPA became aware that a significant number of small, commercial sources use regulated flammable substances, particularly propane, as fuel in quantities in excess of the applicable threshold quantity (10,000 lbs in a process). As a result, these small sources, including farms, restaurants, hotels, and other commercial operations, were covered by the RMP requirements. Many of these sources are in rural locations where accidental releases are less likely to have significant offsite consequences. In light of the purpose of section 112(r)—to focus comprehensive accident prevention requirements on the most potentially dangerous sources—EPA reexamined whether farms and other small fuel users should be covered by the RMP rule.

On May 28, 1999, EPA issued a proposed amendment to the List Rule to create an exemption from threshold quantity determinations for processes containing 67,000 pounds or less of a listed flammable hydrocarbon fuel (64 FR 29171). EPA estimated that the proposed amendment, if promulgated, would reduce the universe of regulated sources from 69,485 to 50,300. At the same time (64 FR 29167), EPA published a temporary stay of the effectiveness of the RMP rule for those sources that would be exempted under the proposal. This stay, which expired on December 21, 1999, was in addition to, and did not affect, a stay of the rule for propane processes entered by the U.S. Court of Appeals for the D.C. Circuit (See Litigation and Court Stay).

While EPA was seeking comment on the proposed rule, Congress also studied the fuel issue and considered ways to provide regulatory relief to fuel users and retailers. Congress was concerned that the RMP rule placed a significant regulatory burden on facilities that were not previously covered by the OSHA PSM Standard. Congress decided to amend section 112(r) of the CAA to remove EPA's authority to list any flammable substance when used as a fuel, or held for sale as a fuel at a retail facility, except under specified circumstances.

While the new law and EPA's proposed rule and temporary stay all offer regulatory relief with respect to fuels, the new law reaches farther than EPA's actions. The new law provides relief for all fuels, not just hydrocarbon fuels. It also removes fuels from the RMP program regardless of the amount a stationary source uses or holds for retail sale, whereas EPA's proposal and stay only affects sources having no more than 67,000 lbs of fuel in a process. The new law does limit relief for fuel sellers to fuel retailers, whereas EPA's stay does not distinguish between types of fuel sellers. However, EPA believes that virtually no fuel wholesaler qualifies for the Agency's stay because wholesalers typically hold fuel in quantities far greater than 67,000 lbs. Even if a few wholesalers would have benefitted from EPA's proposed rule, the Agency believes that Congress has addressed the issue of how to provide regulatory relief to fuel users and sellers, and that EPA should thus implement Congress' approach without making exceptions to it.

Therefore, EPA is today withdrawing the proposed rule as it takes final action to amend the List Rule to conform to the new law. As previously mentioned, EPA's temporary stay of effectiveness expired on December 21, 1999.

B. Litigation and Court Stay

Following promulgation of the RMP rule in 1996, several petitions for judicial review of the rule were filed, 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 entered a temporary stay of the RMP rule as it applies to propane (Chlorine Institute v. Environmental Protection Agency, No. 96–1279, and consolidated cases (Nos. 96–1284, 96–1288, and 96–1290), Order of April 27, 1999). The judicial stay meant that any stationary source, or process at a stationary source, subject to the RMP rule only by virtue of propane was not 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.

On Jan. 5, 2000, the Court lifted its temporary stay in response to a joint motion by EPA and NPGA to dismiss the case and lift the stay. As of that date, part 68, as revised by the Act, is in effect with respect to any facility having more than the 10,000 pounds of propane in a process unless the facility uses the propane as a fuel or sells the propane as a retail facility. Facilities that use propane in their manufacturing processes or hold propane for purposes other than on-site fuel use at a non-retail facility must immediately come into compliance with Section 112(r) of the CAA.

IV. RMP's Submitted Prior to Today's Action

EPA has received about 1,966 RMP's that address one or more of the 19 listed flammable substances that EPA has identified as likely to be used as a fuel. EPA cannot unilaterally delete any of the RMP's submitted for flammable substances from the RMP database, however, because the determination of whether a facility is eligible for the exclusion is based on information which is not reported to EPA, namely, whether a facility uses the flammable substance as a fuel or holds it for retail sale. Instead, EPA plans to send a letter to each of the 1,966 facilities to notify them of the exclusion, to ask them to evaluate their eligibility for the exclusion, and to describe the process the facilities should use to request a withdrawal of or to update these RMP's.

For about 950 of the 1,966 RMP's that reported a potential flammable fuel, only one chemical is reported. For these cases, the facilities will be asked to evaluate whether they qualify for the exclusion based on use or retail sales. If they determine that they do not qualify, no further action is required. If they determine that they do qualify, they may request that EPA withdraw their submission and EPA will delete it from the RMP database. Facilities will have the option of using the form that EPA developed to facilitate the withdrawal or simply stating their request in a letter. Alternatively, facilities can leave the RMP as a voluntary submission in the database and need not take further action.

The balance of the RMP's reported more than one substance. About 200 RMP's reported a toxic chemical substance in addition to the potential flammable fuel. For these cases, the facilities will be asked to evaluate whether their flammable substance qualifies for the exclusion based on use or retail sales. If they determine that they do not qualify, no further action is required. If they determine that they do qualify, they may resubmit their RMP, reporting only on the toxic substances. Alternatively, facilities can leave the original RMP including the flammable fuel submission in the database and need not take further action.

About 745 RMP's reported multiple flammable substances. For these cases, the facilities will be asked to evaluate whether each reported flammable substance qualifies for the exclusion based on use or retail sales. If they determine that none of their reported flammable substances qualify, no further action is required. If they determine that all of the reported substances qualify, they may request that EPA withdraw their submission and EPA will delete it from the RMP database. Facilities will have the option of using the formal withdrawal process or simply sending a letter. Alternatively, facilities can leave the RMP as a voluntary submission in the database and need not take further action. If they determine that only some of the flammable substances reported qualify, they will need to check their flammable worst case scenario and off-site consequence analysis (OCA). If their original worst case analysis is based on a flammable substance that is excluded, the facility should revise their RMP to provide appropriate OCA. Within its enforcement discretion, EPA plans to treat this similarly to the existing requirement to revise RMP's within 6 months of a process change, giving facilities 6 months to revise their RMP's. If their original worst case analysis is based on a flammable substance that is not excluded, the facility won't need to update their RMP, except as part of the regular reporting cycle.

V. Rationale for Issuance of Rule Without Prior Notice

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.

EPA is taking this action without prior notice and opportunity to comment. As previously mentioned, section 2 of the new Act, which took effect on August 5, 1999, immediately removed EPA's authority to list flammable substances when used as a fuel, or held for sale as a fuel at a retail facility. Consequently, EPA's regulation containing the list of regulated substances subject to the RMP rule needs to be modified to reflect the new law.

EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the Agency is codifying legislation which focuses clearly on a particular set of regulations and requires little interpretation by the Agency. In addition, EPA believes it is in the public interest to issue the revised list as soon as possible, to avoid confusion about the coverage of the RMP rule. As of August 5, 1999, there is no statutory basis for extending the RMP rule to listed flammable substances when used as a fuel, or held for sale as a fuel at a retail facility, except under certain circumstances. The Agency's rule should therefore be revised to reflect the change in authority as soon as possible. A comment period is unnecessary because today's action is nondiscretionary. A comment period would also be contrary to the public interest because the resulting delay would contribute to confusion about the coverage of the RMP rule. Thus, notice and public procedure are unnecessary and contrary to the public interest. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

The Agency is also issuing this rule with an immediate effective date. Since its effect is to relieve a restriction (*i.e.,* the requirement to comply with the RMP rule), EPA may make it effective upon promulgation. Further, EPA believes it is in the public interest to make it immediately effective, for the same reasons given above for dispensing with prior notice and comment.

VI. Summary of Revisions to Rule

This section summarizes the changes to the rule.

Section 68.3, Definitions, has been revised to add a definition of retail facility, as defined in the new law.

Section 68.126 has been added to create an exclusion for regulated flammable substances used as fuel or held for sale as fuel at retail facilities. The exclusion is derived from the new law.

In Section 68.130, footnotes have been added to Tables 3 and 4. These two tables list the regulated flammable substances and their threshold quantities. Table 3 lists the regulated flammable substances in alphabetical order while Table 4 lists them in CAS number order. The footnotes remind the reader of the exclusion for regulated flammable substances. The reference to each footnote appears as an asterisk following the term ''flammable substance'' in the titles of Tables 3 and 4.

VII. 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 under Docket A–99–36, 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 FR 51735, 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.

C. 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation.

This action is not subject to this Executive Order because it is not economically significant as defined in E.O. 12866, and because it does not establish an environmental standard intended to mitigate health or safety risks.

D. 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 reduces burden on flammable fuel users, which may include some sources owned or operated by Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule reduces the burden for those state, local,

or tribal governments that may own or operate sources that use flammable fuels. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Under the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Agency is required to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Today's final rule is not subject to RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. The rule is subject to the APA, but as described in Section IV of this preamble, the Agency has invoked the ''good cause'' exemption under APA Section 553(b), which does not require notice and comment. Although this final rule is not subject to the RFA, EPA nonetheless has assessed the potential of this rule to adversely impact small entities subject to the rule. EPA does not believe the rule will adversely impact small entities. This action excludes flammable substances when used as a fuel, or held for sale as a fuel at a retail facility from the list of substances regulated by 40 CFR part 68, which will reduce burden on many small entities that otherwise would be covered by these requirements.

G. Paperwork Reduction Act

This action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 68 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0144 (EPA ICR No.1656.06). EPA estimates a burden hour reduction of 70,400 hours.

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.

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.

Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any or any other statute (see Section IV of this preamble), it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Pursuant to Section 203 of UMRA, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not contain any additional requirements, rather it reduces the burden on small governement sources that use flammable substances as fuel.

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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs 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.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). It takes effect today.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention.

Dated: March 3, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, EPA amends 40 CFR part 68 as follows:

PART 68—[AMENDED]

1. The authority section for part 68 is revised to read as follows:

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

Subpart A—[Amended]

2. Section 68.3 is amended to add the following definition in alphabetical order:

§ 68.3 Definitions.

* * * * *

Retail facility means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

* * * * *

Subpart F—[Amended]

3. Section 68.126 is added to subpart F to read as follows:

§ 68.126 Exclusion.

Flammable Substances Used as Fuel or Held for Sale as Fuel at Retail Facilities. A flammable substance listed in Tables 3 and 4 of § 68.130 is nevertheless excluded from all provisions of this part when the substance is used as a fuel or held for sale as a fuel at a retail facility.

4. Section 68.130 is amended by:

A. Revising the heading of Table 3;

B. Revising the notes to Table 3 and adding a new footnote 1;

C. Revising the heading to Table 4; and

D. Revising the notes to Table 4 and adding a new footnote 1.

The revisions and additions read as follows:

§ 68.130 List of substances.

* * * * *

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES [1] AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order–63 Substances]

* * * * *

[1] A flammable substance when used as a fuel or held for sale as a fuel at a retail facility is excluded from all provisions of this part (see § 68.126).

Note: Basis for Listing:

[a] Mandated for listing by Congress.

[f] Flammable gas.

[g] Volatile flammable liquid.

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES [1] AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order–63 Substances]

* * * * *

[1] A flammable substance when used as a fuel or held for sale as a fuel at a retail facility is excluded from all provisions of this part (see § 68.126).

Note: Basis for Listing:

[a] Mandated for listing by Congress.

[f] Flammable gas.

[g] Volatile flammable liquid.

[FR Doc. 00–5935 Filed 3–10–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–494, MM Docket No. 99–256; RM–9527]

Radio Broadcasting Services; Refugio and Taft, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 293C2 for Channel 291C3 at Refugio, Texas, reallots Channel 293C2 from Refugio, Texas, to Taft, Texas, and modifies the license for Station KTKY(FM) to specify operation on Channel 293C2 at Taft in response to a petition filed by Pacific Broadcasting of Missouri, L.L.C. *See* 64 FR 39963, July 23, 1999. The coordinates for Channel 293C2 at Taft are 27–52–00 and 97–13–08. We shall also allot Channel 291A to Refugio, Texas, at coordinates 28–21–58 and 97–19–11. Mexican concurrence has been received for the allotments at Refugio and Taft, Texas. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–256, adopted February 23, 2000, and released March 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 291C3 and adding Channel 291A at Refugio and adding Taft, Channel 293C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–6052 Filed 3–10–00; 8:45 am]

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federal register

Wednesday
May 26, 1999

Part V

Environmental Protection Agency

40 CFR Part 68

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; Final and Proposed Rules

Proposed Settlement; Clean Air Act 112(r) Accidental Release Prevention Requirements: Risk Management Programs Litigation; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6348–2]

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: Direct final rule.

SUMMARY: This direct final action amends the Chemical Accident Prevention Provisions, also known as the Risk Management Program (RMP) regulations, codified in 40 CFR part 68. The revisions concern the worst-case release scenario analysis for regulated flammable substances in 40 CFR 68.25. EPA is issuing these revisions so that the regulated community can treat regulated flammable substances in the same manner as regulated toxic substances for determining the quantity released when conducting a worst-case release scenario analysis. EPA is taking this direct final action pursuant to a settlement agreement with the American Petroleum Institute (API).

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

DATES: This rule is effective on June 21, 1999 without further notice, unless EPA receives adverse comment by June 16, 1999 or, pursuant to CAA section 113(g), declines to finalize the settlement agreement. If we receive such comment, or decide to withdraw from the settlement agreement, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Docket and Comments. Docket No. A–99–15, containing supporting information used to develop these amendments, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday (except government holidays) from EPA's Air Docket, at Waterside Mall, Room M1500, 401 M Street, SW, Washington, D.C., 20460, telephone 202–260–7548. Written comments should be submitted to the same address. A reasonable fee may be charged for copying.

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.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated 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	Example of regulated entities
Petrochemical	Refineries, Plastics, Resins.
Chemical Manufacturing.	Organics.

This table is not meant to be exhaustive, but rather provides a guide for readers to indicate some of those entities likely to be regulated by this action. The table lists entities EPA is aware of that could potentially be regulated by this action. Other entities not listed in the table could also be regulated. To determine whether a stationary source is regulated by this action, carefully examine the provisions associated with the list of substances and thresholds under § 68.130 and the applicability criteria under § 68.10. If you have questions regarding applicability of this action to a particular entity, consult the hotline or persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Introduction and Background

A. Statutory Authority

These amendments are being promulgated under sections 112(r) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r), 7601(a)(1)).

B. Background

The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental chemical releases. Section 112(r) mandates that EPA promulgate a list of ''regulated substances,'' with ''threshold quantities''. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). EPA promulgated the list of regulated substances on January 31, 1994 (59 FR 4478) (the ''List Rule'') and the accidental release prevention regulations creating the risk management program requirements on June 20, 1996 (61 FR 31668) (the ''RMP Rule''). Together, these two rules are codified at 40 CFR part 68. EPA has since revised the rules in several respects, and these revisions are reflected in the most recent codification of 40 CFR part 68.

Part 68 requires that any source with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program that includes a five-year accident history, offsite consequence analyses, a prevention program, and an emergency response program. In part 68, processes are divided into three categories (Programs 1 through 3). Processes that likely have no potential impact on the public in the case of accidental releases have minimal requirements (Program 1). Processes in Programs 2 and 3 have additional requirements based on their potential for offsite consequences as indicated by worst-case accidental release analysis and their accident history. Program 3 is also triggered if the processes are subject to OSHA's Process Safety Management (PSM) Standard. By June 21, 1999, any source with more than a threshold quantity of a regulated substance in a process must submit to EPA a risk management plan (RMP) that summarizes their implementation of the risk management program.

C. RMP Rule Litigation

The American Petroleum Institute (API) and the Chlorine Institute (CI) filed petitions for judicial review of the

RMP Rule (The Chlorine Institute v. EPA, No. 94–1279 (D.C. Cir.) and consolidated cases (Nos. 96–1284, 96–1288, 96–1289 & 96–1290)). In court filings, API raised issues related to worst-case release scenario analysis (§ 68.25 of the rule) for flammables.

In the final RMP 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. 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 liquified by refrigeration) could be appropriately treated in that manner. Accordingly, EPA and API signed a proposed settlement agreement in May 1999. This settlement agreement is awaiting finalization pursuant to section 113(g) of the CAA.

CI's primary litigation concern related to CAA sections 112(l) and 112(r)(11), as they relate to Department of Transportation (DOT) requirements under the Federal Hazardous Materials Transportation Law (''Federal Hazmat Law''). EPA and CI reached an agreement on this issue and signed a proposed settlement agreement in May 1999. This settlement agreement is awaiting finalization pursuant to section 113(g) of the CAA.

II. Discussion of Revisions to § 68.25

40 CFR 68.25 requires each stationary source subject to the RMP rule 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. A worst-case release means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in § 68.22(a).

In the final rule promulgated on June 20, 1996, EPA established a framework for the worst-case scenario analysis that considers the physical state of the substance and the way in which it is stored or handled (see 40 CFR 68.25):

(1) For toxic gases and gases liquefied by pressure, the worst-case release scenario assumes that the largest quantity is released in 10 minutes and the rate of release to the air is the quantity divided by 10 minutes. Upon loss of containment (e.g. a catastrophic vessel failure), a gaseous substance will be completely released to the air within 10 minutes. Although gases liquefied by pressure will behave initially like a liquid, they will rapidly become gases upon catastrophic release because of the sudden release of pressure and because the storage temperature of the liquid is often much higher than the boiling point of the substance. The rate of flashing and volatilization is generally great enough to vaporize the entire quantity within 10 minutes.

(2) For toxic liquids, the worst-case scenario assumes an instantaneous spill; the release rate to the air is the volatilization rate from a pool that spreads out to a 1 centimeter (cm) depth unless passive mitigation (e.g., a diked area) contains the substance in a smaller area. The rate of volatilization to the air depends on the surface area of the liquid pool and it may be adjusted to account for the smaller surface in a contained area.

(3) For toxic substances liquefied by refrigeration, the scenario assumes an instantaneous liquid spill followed by volatilization of the pool at the substance's boiling point but only if the spilled liquid is contained by passive mitigation at a liquid depth greater than 1 cm. If passive mitigation is not present or is of such large capacity that the refrigerated liquid spill can spread out to a depth of 1 cm, then the quantity of refrigerated liquid is assumed to completely volatilize within 10 minutes. Gases liquefied by refrigeration need time to vaporize and become a gas because the storage temperature of the liquid is less than its boiling point. Therefore, the rate of release to the air is less than the total quantity released in 10 minutes. The liquid must be contained by passive mitigation at a depth greater than 1 cm; otherwise, the rate of warming and volatilization is great enough to completely vaporize the spill within 10 minutes.

For all listed flammables however, the worst case assumes that the quantity in the largest vessel or pipeline vaporizes to form a vapor cloud, followed by a vapor cloud explosion. No consideration was given for liquids or substances liquefied by refrigeration, primarily because EPA assumed that passive mitigation or containment was typically not used under flammable storage due to fire safety reasons. The American Petroleum Institute (API) argued that, in many cases, spilled flammable liquids are, in fact contained, but in a way that prevents a liquid fire from impacting storage vessels and prevents release to the environment. Such containment serves to reduce the quantity available for a vapor cloud explosion in the same way that liquid toxics generate a smaller toxic vapor cloud than gases. If the flammable worst-case scenario were revised to account for liquids in the same way as toxics, then the flammable worst-case scenario could distinguish flammable gases from liquids to avoid generating a technically incorrect and overly conservative result.

EPA agrees that the worst-case assessment for flammable liquids and flammables liquefied by refrigeration is not consistent with the approach for toxic liquids or toxics liquefied by refrigeration. EPA is thus taking direct final action to revise § 68.25(e) so that flammables may be treated in a manner consistent with the treatment of toxics.

Specifically, EPA is making the following changes to § 68.25 for flammables: (1) For regulated flammable substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under § 68.25(b), is released as a gas over 10 minutes. The total quantity shall be assumed to be involved in the vapor cloud explosion. (2) For regulated flammable substances that are normally liquids at ambient temperature, the owner or operator shall assume that the entire quantity in the vessel or pipe, as determined under § 68.25(b), is spilled instantaneously to form a liquid pool. For liquids at temperatures below their atmospheric boiling point, the volatilization rate shall be calculated at the conditions specified in § 68.25(d). The owner or operator shall assume that the quantity which becomes vapor in the first 10 minutes is reported as the quantity released. (3) For flammable gases handled as refrigerated liquids at ambient pressure, the owner or operator may assume that the total quantity of the substance determined in § 68.25(b) instantaneously spills followed by volatilization of the liquid pool at the substance's boiling point and under the conditions specified in § 68.25(d), provided the spilled liquid would be contained by passive mitigation at a liquid depth greater than 1 cm. The quantity of substance that becomes vapor in the first 10 minutes is involved in the vapor cloud explosion. If passive mitigation is not present or is of such large capacity that the refrigerated liquid spill can spread out to a depth of 1 cm, then the quantity of refrigerated

liquid is assumed to completely volatilize within 10 minutes and the total quantity is involved in the vapor cloud explosion.

This modification allows stationary sources to account for volatilization of the liquid pool if flammables are liquefied by refrigeration; however, sources are not required to use this added assumption. Sources can still use the quantity determined under § 68.25(b) as the quantity released. Sources that have already submitted their RMP may choose to use this revised approach, but are not required to do so. Sources that choose to use this revised approach, must revise and re-submit their RMP to EPA by June 21, 1999.

EPA will not be modifying RMP*Submit™ (the computer database used to report the RMPs) as a result of this rule at this time. Instead, stationary sources reporting for flammables liquefied by refrigeration would need to calculate the total quantity of the gas generated (taking the volatilization rate into account) from the pool in a 10-minute period. This value would be reported as ''Quantity released'' in section 4.4 of RMP*Submit™. The passive mitigation (dikes, berms, etc.) considered would be specified at ''Other'' in section 4.10. EPA also suggests that stationary sources utilize the Executive Summary section of RMP*Submit™ to explain how they calculated the quantity released for the refrigerated flammable substances.

Section 68.25(e) will be revised by adding (i) and (ii) and adding a new (f); existing (f), (g), and (h) will become (g), (h), and (i).

EPA is publishing this rule without prior proposal because we view this as consistent with the original rule as promulgated and as a noncontroversial amendment. No adverse comment is anticipated. The sole regulatory change contemplated under the settlement agreement represents a narrow technical amendment designed to make the treatment of flammables consistent with that of toxics. This amendment merely adjusts the way in which releases of these substances are modeled and does not alter the number of sources subject to RMP or the basic obligations under the RMP. In light of the foregoing and the need to promulgate the revision prior to the rule's June 21, 1999 compliance date, the Agency believes a direct final rule is the most appropriate vehicle for implementation of the settlement agreement.

In the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to revise § 68.25 for flammables if adverse comments are filed. This rule will be effective on June 21, 1999, without further notice unless we receive adverse comment by June 16, 1999. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Clarification of CAA Sections 112(l) and 112(r)(11)

Pursuant to the settlement agreement with CI, EPA is clarifying its interpretation of CAA sections 112(l) and 112(r)(11), as they relate to DOT requirements under the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101–5127.

In our amendments to 40 CFR part 68 (63 FR 640, January 6, 1998) we dealt with the issue of the relationship between part 68 and statutes administered by and regulations promulgated by the Department of Transportation (DOT), such as the Federal Hazardous Materials Transportation Law (''Federal Hazmat Law'') and the Hazardous Materials Regulations (''HMR''). We noted therein that: ''EPA's regulations do not supersede or limit DOT's authorities and, therefore, are in compliance with CAA section 310.''

The definition of stationary source finalized in that rule generally provides that containers that are in transportation or storage incident to transportation are not part of a stationary source or a process at the stationary source. On the other hand, the definition of stationary source does provide that such containers are part of a stationary source under certain circumstances, most notably when they are being loaded, unloaded or on site for storage not incidental to transportation. Because a transportation container may at times function as a storage container or a process at a stationary source, or may function as part of operations at a stationary source, EPA is specifically directed by statute to address these activities (CAA section 112(r)(7)(B)(i)) (''The regulations shall cover storage, as well as operations''). To the extent that DOT is also authorized under the Federal Hazmat Law to regulate activities that are at a stationary source, nothing in the CAA prohibits both agencies from exercising concurrent jurisdiction over these activities. As EPA has said in the context of the RMP Rule, compliance with Federal Hazmat Law and HMR requirements may satisfy parallel requirements of part 68. This approach to implementation reflects the coordination between the agencies that is called for under CAA section 112(r)(7)(D). The exercise of concurrent jurisdiction preserves the applicability of the Federal Hazmat Law and HMR and does not supersede or limit DOT's jurisdiction. CAA section 310 provides that the CAA shall not be construed as superseding or limiting the authority or responsibilities of any Federal agency. Thus, neither CAA section 112(r)(11) (which provides that section 112(r) does not preempt state regulations that are more stringent than EPA's) nor section 112(l) (which allows EPA to delegate the accident prevention regulations to a state if the state's program is no less stringent than EPA's) can be read to authorize a state to regulate in a manner that would otherwise be preempted under the Federal Hazmat Law. A state that, for purposes of obtaining delegation under section 112(l), adopts Part 68 or a program that is substantively the same as Part 68 will not be considered by EPA to regulate in a manner that would otherwise be preempted under the Federal Hazmat Law.

IV. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of this notice, unless EPA withdraws this rule as described earlier in this notice. Under section 307(b)(2) of CAA, the requirements that are the subject of today's document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

V. 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 rulmaking 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 direct final 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.

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.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et. seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on June 21, 1999.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention.

Dated: May 17, 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 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(a)(1), 7661–7661f.

Subpart B—Hazard Assessment

2. Section 68.25 is amended by redesignating paragraphs (f), (g), and (h) as (g), (h), and (i), and by revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 68.25 Worst-case release scenario analysis.

* * * * *

(e) *Worst-case release scenario—flammable gases.* The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section and the provisions below, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT equivalent methods.

(1) For regulated flammable substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The total quantity shall be

assumed to be involved in the vapor cloud explosion.

(2) For flammable gases handled as refrigerated liquids at ambient pressure:

(i) If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of one centimeter or less, the owner or operator shall assume that the total quantity of the substance is released as a gas in 10 minutes, and the total quantity will be involved in the vapor cloud explosion.

(ii) If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 centimeter, the owner or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section. The owner or operator shall assume that the quantity which becomes vapor in the first 10 minutes is involved in the vapor cloud explosion.

(f) *Worst-case release scenario—flammable liquids.* The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section and the provisions below, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT equivalent methods.

(1) For regulated flammable substances that are normally liquids at ambient temperature, the owner or operator shall assume that the entire quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. For liquids at temperatures below their atmospheric boiling point, the volatilization rate shall be calculated at the conditions specified in paragraph (d) of this section.

(2) The owner or operator shall assume that the quantity which becomes vapor in the first 10 minutes is involved in the vapor cloud explosion.

* * * * *

[FR Doc. 99–12936 Filed 5–24–99; 10:57 am]

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January 6, 1999

Part IV

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7), Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6214–9]

RIN 2050–AE46

Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action modifies the chemical accident prevention rule codified in 40 CFR Part 68. The chemical accident prevention rule requires owners and operators of stationary sources subject to the rule to submit a risk management plan (RMP) by June 21, 1999, to a central location specified by EPA. In this action, EPA is amending the rule to: add four mandatory and five optional RMP data elements, establish specific procedures for protecting confidential business information when submitting RMPs, adopt the government's use of a new industry classification system, and make technical corrections and clarifications to Part 68. However, as stated in the proposed rule for these amendments, this action does not address issues concerning public access to offsite consequence analysis data in the RMP.

DATES: The rule is effective February 5, 1999.

ADDRESSES: Supporting material used in developing the proposed rule and final rule is contained in Docket A–98–08. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except government holidays) at Room 1500, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob or John Ferris, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 401 M Street SW, Washington, DC 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.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated 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	Basic chemical manufacturing, petrochemicals, resins, agricultural chemicals, pharmaceuticals, paints, cleaning compounds.
Petroleum	Refineries.
Other Manufacturing	Paper, electronics, semiconductors, fabricated metals, industrial machinery, food processors.
Agriculture	Agricultural retailers.
Public Sources	Drinking water and waste water treatment systems.
Utilities	Electric utilities.
Other	Propane retailers and users, cold storage, warehousing, and wholesalers.
Federal Sources	Military and energy installations.

This table is not meant to be exhaustive, but rather provides a guide for readers to indicate those entities likely to be regulated by this action. The table lists entities EPA is aware of that could potentially be regulated by this action. Other entities not listed in the table could also be regulated. To determine whether a stationary source is regulated by this action, carefully examine the provisions associated with the list of substances and thresholds under § 68.130 and the applicability criteria under § 68.10. If you have questions regarding applicability of this action to a particular entity, consult the hotline or persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Introduction and Background

A. Statutory Authority

These amendments are being promulgated under sections 112(r) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r), 7601(a)(1)).

B. Background

The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental chemical releases. Section 112(r) mandates that EPA promulgate a list of ''regulated substances,'' with threshold quantities. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). EPA promulgated the list of regulated substances on January 31, 1994 (59 FR 4478) (the ''List Rule'') and the accidental release prevention regulations creating the risk management program requirements on June 20, 1996 (61 FR 31668) (the ''RMP Rule''). Together, these two rules are codified as 40 CFR Part 68. EPA amended the List Rule on August 25, 1997 (62 FR 45132), to change the listed concentration of hydrochloric acid. On January 6, 1998 (63 FR 640), EPA amended the List Rule to delist Division 1.1 explosives (classified by DOT), to clarify certain provisions related to regulated flammable substances and to clarify the transportation exemption.

Part 68 requires that sources with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program that includes a five-year accident history, offsite consequence analyses, a prevention

program, and an emergency response program. In Part 68, processes are divided into three categories (Programs 1 through 3). Processes that have no potential impact on the public in the case of accidental releases have minimal requirements (Program 1). Processes in Programs 2 and 3 have additional requirements based on the potential for offsite consequences associated with the worst-case accidental release and their accident history. Program 3 is also triggered if the processes are subject to OSHA's Process Safety Management (PSM) Standard. By June 21, 1999, sources must submit to a location designated by EPA, a risk management plan (RMP) that summarizes their implementation of the risk management program.

When EPA promulgated the risk management program regulations, it stated that it intended to work toward electronic submission of RMPs. The Accident Prevention Subcommittee of the CAA Advisory Committee convened an Electronic Submission Workgroup to examine technical and practical issues associated with creating a national electronic repository for RMPs. Based on workgroup recommendations, EPA is in the process of developing two systems, a user-friendly PC-based submission system (RMP*Submit) and a database of RMPs (RMP*Info).

The Electronic Submission Workgroup also recommended that EPA add some mandatory and optional data elements to the RMP and asked EPA to clarify how confidential business information (CBI) submitted in the RMP would be handled. Based on these recommendations and requests for clarifications, EPA proposed amendments to Part 68 on April 17, 1998 (63 FR 19216). These amendments proposed to replace the use of Standard Industrial Classification (SIC) codes with the North American Industry Classification System (NAICS) codes, add four mandatory data elements to the RMP, add five optional data elements to the RMP, establish specific requirements for submission of information claimed CBI, and make technical corrections and clarifications to the rule. EPA received 47 written comments on the proposed rule. Today's rule reflects EPA's consideration of all comments; major issues raised by commenters and EPA's responses are discussed in Section III of this preamble. A summary of all comments submitted and EPA's responses can be found in a document entitled, Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments: Summary and Response to Comments, in the Docket (see **ADDRESSES**).

II. Summary of the Final Rule

NAICS Codes

On January 1, 1997, the U.S. Government, in cooperation with the governments of Canada and Mexico, adopted a new industry classification system, the North American Industry Classification System (NAICS), to replace the Standard Industrial Classification (SIC) codes (April 9, 1997, 62 FR 17288). The applicability of some Part 68 requirements (i.e., Program 3 prevention requirements) is determined, in part, by SIC codes, and Part 68 also requires the reporting of SIC codes in the RMP. Therefore, EPA is revising Part 68 to replace all references to ''SIC code'' with ''NAICS code.'' In addition, EPA is replacing, as proposed, the nine SIC codes subject to Program 3 prevention program requirements with ten NAICS codes, as follows:

NAICS	Sector
32211	Pulp mills
32411	Petroleum refineries
32511	Petrochemical manufacturing
325181	Alkalies and chlorine
325188	All other inorganic chemical manufacturing
325192	Other cyclic crude and intermediate manufacturing
325199	All other basic organic chemical manufacturing
325211	Plastics and resins
325311	Nitrogen fertilizer
32532	Pesticide and other agricultural chemicals

NAICS codes are either five or six digits, depending on the degree to which the sector is subdivided.

RMP Data Elements

As proposed, EPA is adding four new data elements to the RMP: latitude/longitude method and description, CAA Title V permit number, percentage weight of a toxic substance in a liquid mixture, and NAICS code for each process that had an accidental release reported in the five-year accident history. EPA is also adding five optional data elements: local emergency planning committee (LEPC) name, source or parent company e-mail address, source homepage address, phone number at the source for public inquiries, and status under OSHA's Voluntary Protection Program (VPP).

Prevention Program Reporting

EPA is not revising Sections 68.170 and 68.175 as proposed. Prevention program reporting, therefore, will not be changed to require a prevention program for each portion of a process for which a Process Hazard Analysis (PHA) or hazard review was conducted. Instead, EPA plans to create functions within RMP*Submit to provide stationary sources with a flexible way of explaining the scope and content of each prevention program they implement at their facility.

Confidential Business Information

EPA is clarifying how confidential business information (CBI) submitted in the RMP will be handled. EPA has determined that the information required by certain RMP data elements does not meet the criteria for CBI and therefore may not be claimed as such. The Agency is also requiring submission of substantiation at the time a CBI claim is filed.

Finally, EPA is promulgating several of the technical corrections and clarifications, as proposed in the **Federal Register**, April 17, 1998 (63 FR 19216).

III. Discussion of Issues

EPA received 47 comments on the proposed rule. The commenters included chemical manufacturers, petroleum refineries, environmental groups, trade associations, a state agency, and members of the public. The major issues raised by commenters are addressed briefly below. The Agency's complete response to comments received on this rulemaking is available in the docket (see **ADDRESSES**). The document is titled Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments: Summary and Response to Comments.

A. NAICS Codes

Two commenters asked that sources be given the option to use either SIC codes or NAICS codes, or both, in their initial RMP because the NAICS system is new and may not be familiar to sources. EPA disagrees with this suggestion. EPA intends to provide several outreach mechanisms to assist sources in identifying their new NAICS code. RMP*Submit will provide a ''pick list'' that will make it easier for sources to find the appropriate code. Also, selected NAICS codes are included in the General Guidance for Risk Management Programs (July 1998) and in the industry-specific guidance documents that EPA is developing. EPA will also utilize the Emergency Planning and Community Right-to-Know Hotline at 800–424–9346 (or 703–412–9810) and its web site at www.epa.gov/ceppo/, to assist sources in determining the source's NAICS codes. EPA also notes that the Internal Revenue Service is planning to require businesses to

provide NAICS-based activity codes on their 1998 tax returns, so many sources will have become familiar with their NAICS codes by the June 1999 RMP deadline.

EPA believes it is necessary and appropriate to change from SIC codes to NAICS codes at this time. EPA recognizes that NAICS codes were developed for statistical purposes by the Office of Management and Budget (OMB). In the notice of April 9, 1997 (62 FR 17288) OMB stated that the ''[u]se of NAICS for nonstatistical purposes (e.g., administrative, regulatory, or taxation) will be determined by the agency or agencies that have chosen to use the SIC for nonstatistical purposes.'' EPA has determined that NAICS is appropriate in this rule for several reasons. First, the reason the SIC codes were replaced by NAICS codes is because the SIC codes no longer accurately represent today's industries. The SIC codes will become more obsolete over time because OMB will no longer be supporting the SIC codes; therefore, no new or modified SIC codes will be developed to reflect future changes in industries. Second, as the SIC codes become obsolete, most users of SIC codes will likely change to NAICS codes over time, so future data sharing and consistency will be enhanced by use of NAICS codes in the RMP program. Third, through this rulemaking process, EPA has analyzed specific conversions of SIC codes to NAICS codes for the RMP program and was able to identify NAICS codes that were applicable to fulfilling the purposes of this rule. Finally, because the RMP reporting requirement is new, it is reasonable to begin the program with NAICS codes now rather than converting to them later.

Three commenters expressed support for the ten NAICS codes that EPA proposed to use in place of the nine SIC codes referenced in section 68.10(d)(1) of Part 68 and one commenter partially objected. Section 68.10(d)(1) provides that processes in the referenced codes are subject to Program 3 requirements (if not eligible for Program 1). One commenter objected to EPA's proposal to replace the SIC code for pulp and paper mills with only the NAICS code for pulp mills that do not also produce paper or paperboard. The commenter asked EPA to reexamine the accident history of paper and paperboard mills. As discussed in the preamble of the proposed rule, EPA reviewed the accident history data prior to proposing the new NAICS codes. Neither facilities that classify themselves as paper mills (NAICS Code 322121) nor paperboard mills (NAICS code 32213) met the accident history criteria that EPA used to select industrial sectors for Program 3.

EPA notes that a pulp process at a paper or a paperboard mill may still be subject to Program 3 as long as the process contains more than a threshold quantity of a regulated substance and is not eligible for Program 1. Section 68.10(d)(1) uses industrial codes to classify processes, not facilities as a whole. Since section 68.10(d)(1) will continue to list the code for pulp mills, pulpmaking processes will continue to be subject to Program 3. In addition, under section 68.10(d)(2), paper processes will be in Program 3 (unless eligible for Program 1) if they are subject to OSHA's Process Safety Management (PSM) standard. Most pulp and paper processes are, in fact, subject to this standard.

One commenter objected to assigning NAICS codes to a process rather than the source as a whole. EPA first notes that the requirement to assign a SIC code to a process was adopted in the original RMP rulemaking two years ago. Today's rule does not change that requirement except to substitute NAICS for SIC codes. In any event, EPA is today modifying Part 68 to clarify that sources provide the NAICS code that ''most closely corresponds to the process.'' EPA believes that assigning an industry code to a process will help implementing agencies and the public understand what the covered process does; using the code makes it possible to provide this information without requiring a detailed explanation from the source. In addition, the primary NAICS code for a source as a whole may not reflect the activity of the covered process.

B. RMP Data Elements

EPA proposed to add, as optional RMP data elements: local emergency planning committee (LEPC), source (or parent company) E-mail address, source homepage address, phone number at the source for public inquiries, and OSHA Voluntary Protection Program (VPP) status. EPA also proposed to add, as mandatory data elements: method and description of latitude/longitude, Title V permit number, percent weight of a toxic substance in a liquid mixture, and NAICS code (only in the five-year accident history section).

Commenters generally supported the new optional data elements. One commenter requested that the optional elements be made mandatory. EPA disagrees with this comment. While the elements are useful, many sources covered by this rule will not have e-mail addresses or home pages. The RMP will provide both addresses and phone numbers so that the public will have methods to reach the source. EPA has learned that in some areas there are no functioning LEPCs, therefore, at this time, EPA will not add this as a mandatory data element. However, in most cases, the LEPC for an area can be determined by contacting the local government or the State Emergency Response Commission (SERC) for which the area is located. Therefore, reporting these data elements will remain optional at this time.

One commenter supported adding the listing of local emergency planning committee in the RMP data elements as an optional data element. The commenter stated that, although it is an optional data element, this listing will enhance the ability of local responders and emergency planners to adequately prepare and train for emergency events.

Of the data elements that were proposed to be mandatory, one commenter objected to the addition of latitude/longitude method and description. The commenter stated that it was not clear in the proposal why the method and description information is needed. EPA is seeking latitude/longitude method and description in accordance with its Locational Data Policy. Several EPA regulations require sources to provide their latitude and longitude, so that EPA can more readily locate facilities and communicate data between Agency offices. Sharing of data between EPA offices reduces duplication of information. Latitude/longitude method and description provides information needed by EPA offices, and other users of the data, to rectify discrepancies that may appear in the latitude and longitude information provided by the source under various EPA requirements. Documentation of the method by which the latitude and longitude are determined and a description of the location point referenced by the latitude and longitude (e.g., administration building) will permit data users to evaluate the accuracy of those coordinates, thus addressing EPA data sharing and integration objectives.

EPA believes this information will also facilitate EPA-State coordination of environmental programs, including the chemical accident prevention rule. The State/EPA Data Management Program is a successful multi-year initiative linking State environmental regulatory agencies and EPA in cooperative action. The Program's goals include improvements in data quality and data integration based on location identification. Therefore, as proposed, the latitude/longitude method and description will be added to the existing RMP data

elements. RMP*Submit will provide a list of methods and descriptions from which sources may choose.

EPA also proposed to require that sources report the percentage weight (weight percent) of a toxic substance in a mixture in the offsite consequence analysis (OCA) and the accident history sections of the RMP. This information is necessary for users of RMP data to understand how worst case and alternative release scenarios have been modeled. EPA has decided to require reporting of the weight percent of toxic substance in a liquid mixture because this information is necessary to understand the volatilization rate, which determines the downwind dispersion distance of the substance. The volatilization rate is affected by the vapor pressure of the substance in the mixture. For example, a spill of 70 percent hydrofluoric acid (HF) will volatilize more quickly than a spill of the same quantity of HF in a 50 percent solution; consequently, over a 10-minute period, the 70 percent solution will travel further. Reviewers of the RMP data, including local emergency planning committees, need to know the weight percent to be able to evaluate the results reported in the offsite consequence analysis and the impacts reported in the accident history. Without knowing the weight percent of the substance in the mixture, users of the data may compare scenarios or incidents that appear to involve the same chemical in the same physical state, but in fact involve the same chemical held in a different physical state.

One commenter stated that for gas mixtures, percentage by volume (or volume percent) should be required to be reported rather than weight percent. In this final rule, EPA does not require reporting of the weight percent (or volume percent) of a regulated substance in a gas mixture. If a source handles regulated substances in a gaseous mixture (e.g., chlorine with hydrogen chloride), the quantity of a particular regulated substance in the mixture is what is reported in the RMP, since that is what would be released into the air. Its percentage weight in the mixture is irrelevant.

Another commenter objected to this data element, claiming that it could result in reverse engineering and create a competitive disadvantage. EPA does not believe that this requirement would create a competitive disadvantage, since similar information is available to the public under Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986. Even so, if it were to have such an effect, sources can claim this element as CBI if it can meet the criteria for CBI claims in 40 CFR Part 2. Another commenter stated that the public would be concerned if the percentages did not add to 100, in the event that the source handles both regulated and non-regulated substances. EPA believes that because a source must model only one substance in a release scenario, the source need not report the percentages of the other substances in the mixture. Therefore, it is expected that the weight percent for mixtures would not always add up to 100, because the mixture could contain non-regulated substances.

A third commenter suggested that requiring sources to report percentage weight of a toxic substance in a liquid mixture would create confusion with the reporting of mixtures containing flammable regulated substances.

In the January 6, 1998 rule (63 FR 640), EPA clarified that flammable regulated substances in mixtures are only covered by the RMP rule if the entire mixture meets the National Fire Protection Association (NFPA) criteria of 4, thus the entire mixture becomes the regulated substance. As a result, the percentage of flammables in a mixture is not relevant under the rule and the requirement to report the percentage weight will only apply to toxic substances in a liquid mixture.

Finally, in the **Federal Register** notice of June 20, 1996 (61 FR 31688), EPA clarified the relationship between the risk management program and the air permit program under Title V of the CAA for sources subject to both requirements. Under section 502(b)(5)(A), permitting authorities must have the authority to assure compliance by all covered sources with each applicable CAA standard, regulation or requirement, including the regulations implementing section 112(r)(7). Requiring sources covered by Title V and section 112(r) to provide their Title V permit number will help Title V permitting authorities assure that each source is complying with the RMP rule.

In summary, with the exception of adding the phrase ''that most closely corresponds to the process'' in sections 68.42(b)(4), 68.160(b)(7), 68.170(b), and 68.175(b), EPA has decided to finalize the optional and mandatory data elements as they were proposed.

C. Prevention Program Reporting

The final RMP rule, issued June 20, 1996 (61 FR 31668), requires sources to report their prevention program for each ''process.'' Because the applicable definition of ''process'' is broad, multiple production and storage units might be a single, complex ''process.'' However, the Agency realizes that some elements of a source's prevention program for a process may not be applicable to every portion of the process. In such a situation, reporting prevention program information for the process as a whole could be misleading without an explanation of which prevention program element applies to which part of the process. In order to get more specific information on which prevention program practices apply to different production and storage units within a process, EPA proposed to revise the rule to require prevention program reporting for each part of the process for which a separate process hazard analysis (PHA) or hazard review was conducted. EPA further proposed deleting the second sentence from both sections 68.170(a) and 68.175(a), which presently states that, ''[i]f the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which process the information applies.''

A number of industry commenters objected to the proposed revisions as wrongly assuming that a one-to-one relationship exists between a prevention program and a PHA. The commenters asserted that EPA's proposed revision did not reflect how facilities conduct PHAs or implement prevention measures and would cause significant duplicate reporting, creating unnecessary extra work for facility personnel. One commenter explained that depending on a source's circumstances, it might conduct a PHA for each production line, including all of its different units, or it might conduct a PHA for each common element of its different production lines. Accordingly, the commenters claimed that EPA's proposal to require the owner/operator to submit separate prevention program information for every portion of a process covered by a PHA would result in multiple submissions of much of the same material, and would add no value to process safety or accidental release prevention. Commenters also opposed the deletion of the second sentence in sections 68.170(a) and 68.175(a). One commenter noted that many of the elements of the prevention program will not only be common to a process, but will be common to an entire stationary source. Thus commenters argued that EPA's proposals would result in redundant submittals and place an unjustified burden on the regulated community.

EPA acknowledges that PHAs do not necessarily determine the scope of prevention program measures. Moreover, EPA agrees that duplicative

reporting should be reduced as much as possible. At the same time, EPA, implementing agencies, and other users of RMP data need to have information that is detailed enough to understand the hazards posed by, and the safety practices used for, particular parts of processes and equipment. EPA recognizes that some aspects of prevention programs are likely to be implemented facility-wide, rather than on a process or unit basis, whereas other aspects may apply to a particular process or only to particular units within a process. For example, most sources are likely to develop an employee participation plan and a system for hot work permits facility-wide, rather than on a process or unit basis. For sources having processes that include several units (e.g., multiple reactors or purification systems), the hazards, process controls, and mitigation systems may vary among the individual units. For example, one may have a deluge fire control system while another may have a runaway reaction quench system.

EPA has concluded that its proposed changes to prevention program reporting would not lead sources to prepare RMPs that accurately and efficiently communicate the hazards posed by different aspects of covered processes and the safety practices used to address those hazards. The Agency now believes that no rule changes are necessary to ensure that RMPs convey that information. The current rule already requires prevention program reporting, and the issue has been how to efficiently convey that information in sufficient detail. EPA believes that its electronic program for submitting RMPs can be designed to provide for sufficient specificity in prevention program reporting without requiring duplicative reporting. In particular, the Agency plans to create a comment/text field in RMP*Submit for specifying which parts of a prevention program apply to which portions of a particular process. For example, if a deluge system only applies to a certain part of the overall process, the source would indicate in the comment/text screen the portions of the process to which the deluge system applies.

To reduce the burden of reporting, EPA also plans to create a function in RMP*Submit which will allow a source to automatically copy prevention program data previously entered for one process to fill blank fields in another process's prevention program. The source could then edit any of the data elements that are different. For example, where the prevention programs for two processes are identical (e.g., two identical storage tanks that are considered separate processes), the source could copy the data entered for one to fill in the blank field for the other. If some of the data elements vary between the prevention programs, the source will be able to autofill and change only those items that vary among processes or units.

Although the autofill option will minimize the burden of reporting common data elements for those sources filing electronically, EPA has decided not to delete the sentence, in both sections 68.170(a) and 68.175(a), which states, ''[i]f the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies '', as proposed.

D. Confidential Business Information (CBI)

1. Background

A central element of the chemical accident prevention program as established by the Clean Air Act and implemented by Part 68 is providing state and local governments and the public with information about the risk of chemical accidents in their communities and what stationary sources are doing to prevent such accidents. As explained in the preamble to the final RMP rule (61 FR 31668, June 20, 1996), every covered stationary source is required to develop and implement a risk management program and provide information about that program in its RMP. Under CAA section 112(r)(7)(B)(iii), a source's RMP must be registered with EPA and also submitted to the Federal Chemical Safety and Hazard Investigation Board (''the Board''), the state in which the source is located, and any local entity responsible for emergency response or planning. That section also provides that RMPs ''shall be available to the public under section 114(c)'' of the CAA. Section 114(c) gives the public access to information obtained under the Clean Air Act except for information (other than emission data) that would divulge trade secrets.

As noted previously, in the final RMP rule EPA announced its plan to develop a centralized system for submitting electronic versions of RMPs that would reduce the paperwork burden on both industry and receiving agencies and provide ready public access to RMP data. Under the system, a covered source would submit its RMP on computer diskette, which would be entered into a central database that all interested parties could access electronically. The system would thus make it possible for a single RMP submission to reach all interested parties, including those identified in section 112(r)(7)(B)(iii).[1]

An important assumption underlying the Agency's central submission plan was that RMPs would rarely, if ever, contain confidential business information (CBI). Following publication of the final rule, concerns were raised that at least some of the information required to be reported in RMPs could be CBI in the case of particular sources. While the June 20, 1996 rule provided for protection of CBI under section 114(c) (see section 68.210(a)), EPA was asked to address how CBI would be protected in the context of the electronic programs being developed for RMP submission and public access.

In the April 17, 1998 proposal to revise the RMP rule, EPA made several proposals concerning protection of CBI. It first reviewed the information requirements for RMPs (sections 68.155–185) and proposed to find that certain required data elements would not entail divulging information that could meet the test for CBI set forth in the Agency's comprehensive CBI regulations at 40 CFR Part 2.[2] Information provided in response to those requirements could not be claimed CBI. EPA also requested comment on whether some information that might be claimed as CBI (e.g., worst-case release rate or duration) would be ''emission data'' and thus publicly available under section 114(c) even if CBI.

EPA administers a variety of statutes pertaining to the protection of the environment, each with its own data collection requirements and requirements for disclosure of information to the public. In the implementation of these statutes, the Agency collects emission, chemical, process, waste stream, financial, and other data from facilities in many, if not most, sectors of American business. Companies may consider some of this information vital to their competitive

[1] It is important to note that, as discussed in Section III. E of this preamble, this rule does not address issues concerning public access to offsite consequence analysis data in the RMP.

[2] Information is CBI if (1) the business has asserted a claim which has not expired, been waived, or been withdrawn; (2) the business has shown that it has taken and will continue to take reasonable steps to protect the information from disclosure; (3) the information is not and has not been reasonably obtainable by the public (other than governmental bodies) by use of legitimate means; (4) no statute requires disclosure of the information; and (5) disclosure of the information is likely to cause substantial harm to the business' competitive position. 40 CFR section 2.208.

position, and claim it as confidential business information (CBI).

In the course of implementing statutes, the Agency may have a need to communicate some or all of the information it collects to the public as the basis for a rulemaking, to its contractors, or in response to requests pursuant to the Freedom of Information Act (FOIA). Information found to be CBI is exempt from disclosure under FOIA. To manage both CBI claims and FOIA requests, EPA has promulgated in 40 CFR Part 2, Subpart B a set of procedures for reviewing CBI claims, releasing information found not to be CBI, and where authorized, disclosing CBI. Subpart B lists the criteria that information must meet in order to be considered CBI, as well as the special handling requirements the Agency must follow when disclosing CBI to authorized representatives.

For RMP requirements that might entail divulging CBI, EPA proposed that a source be required to substantiate a CBI claim to EPA at the time that it makes the claim. Under EPA's Part 2 regulations, a source claiming CBI generally is required to substantiate the claim only when EPA needs to make the information public as part of some proceeding (e.g., a rulemaking) or EPA receives a request from the public (e.g., under the Freedom of Information Act (FOIA)) for the information. In view of the public information function of RMPs and the interest already expressed by members of the public in them, EPA proposed ''up-front substantiation'' of CBI claims to ensure that information not meeting CBI criteria would be made available to the public as soon as possible. This approach of requiring up-front substantiation is the same as that used for trade secret claims filed under the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.[3]

In addition, EPA proposed that any source claiming CBI submit two versions of its RMP: (1) a redacted (''sanitized''), electronic version, which would become part of RMP*Info, and (2) an unsanitized (unredacted) paper copy of the RMP (see proposed section 68.151(c)). The electronic database of RMPs would contain only the redacted version unless and until EPA ruled against all or part of the source's CBI claim, in keeping with the Part 2 procedures. In this way, the public would have access only to the non-CBI elements of sources' RMPs. EPA further stated that state and local agencies could receive the unredacted RMPs by requesting them from EPA under the Part 2 regulations. Those regulations authorize EPA to provide CBI to an agency having implementation responsibilities under the CAA if the agency either demonstrates that it has the authority under state or local law to compel such information directly from the source or that it will ''provide adequate protection to the interests of affected businesses'' (40 CFR 2.301(h)(3)).

The following sections of this preamble summarize and respond to the comments EPA received on the CBI-related aspects of its proposal. At the outset, however, EPA wants to emphasize that it does not anticipate many CBI claims being made in connection with RMPs. The Agency developed the RMP data elements with the issue of CBI in mind. It sought to define data elements that would provide basic information about a source's risk management program without requiring it to reveal CBI. To have done otherwise would have risked creating RMPs that were largely unavailable to the public. EPA continues to believe that the required RMP data elements will rarely require that a business divulge CBI. The Agency will carefully monitor the CBI claims made. If it appears that the number of claims being made is jeopardizing the public information objective of the chemical accident prevention program, EPA will consider ways of revising RMPs, including further rulemakings or revising the underlying program, to ensure that important health and safety information is available to the public.

2. RMP Data Elements Found Not CBI

Fifteen commenters representing environmental groups and members of the public opposed allowing some or all RMP data to be claimed as CBI in light of the public's interest in the information RMPs will provide. A number of commenters urged EPA not to allow the following RMP data elements (and supporting documents) to be claimed as CBI:

- Mitigation measures considered by the firm in its offsite consequence analysis,
- Major process hazards identified by the firm,
- Process controls in use,
- Mitigation systems in use,
- Monitoring and detection systems in use, and
- Changes since the last hazard review.

In addition, one commenter contended that even chemical identity and quantity should be ineligible for CBI protection, since the requirement to submit an RMP only applies to facilities using a few well-known, extremely hazardous chemicals, and the public's right to know should always outweigh a company's claim to CBI.

Along the same lines, a number of commenters urged EPA to develop a ''corporate sunshine rule'' that would allow confidentiality concerns to be overridden if the protected information is needed by the public and experts to understand and assess safety issues. Another commenter recommended that a business claiming a chemical's identity as CBI should be required to provide the generic name of the chemical and information about its adverse health effects so the public can determine the potential risks.

One commenter argued that some of the RMP data that EPA suggested could reveal CBI, (e.g., release rate), were not ''emission data,'' because the worst case scenario data are theoretical estimates, and do not represent any real emissions, past or present.

Representatives of the chemical and petroleum industries disagreed with EPA's proposal to list the data elements that EPA believed could not reveal CBI in any case. These commenters asserted that EPA could not anticipate all the ways in which information required by a data element might reveal CBI, and accordingly urged the Agency to make

[3] Section 302 of EPCRA (codified in 40 CFR Part 355) requires any facility having more than a threshold planning quantity of an extremely hazardous substance (EHS) to notify its state emergency response commission (SERC) and local emergency planning committee (LEPC) that the facility is subject to emergency planning. The vast majority of toxic substances listed in 40 CFR Section 68.130 were taken from the EHS list. Section 303 of EPCRA requires LEPCs to prepare an emergency response plan for the community that is under their jurisdiction. Section 303 of EPCRA also requires that facilities subject to section 302 shall provide any information required by their LEPC necessary for developing and implementing the emergency plan. Section 304 of EPCRA requires an immediate notification of a release of an EHS or Hazardous Substances listed in 40 CFR Section 302.4 above a reportable quantity to state and local entities. Section 304 also requires a written follow-up which includes among other things, the chemical name, quantity released and any known or anticipated health risks associated with the release. Sections 311 and 312 of EPCRA (codified in 40 CFR Part 370) require facilities that are subject to OSHA Hazard Communication Standard (HCS), to provide information to its SERC, LEPC and local fire department. This information includes the hazards posed by its chemicals, and inventory information, including average daily amount, maximum quantity and general location. Section 313 of EPCRA (codified in 40 CFR Part 372) requires certain facilities that are in specific industries (including chemical manufacturers) and that manufacture, process, or otherwise use a toxic chemical above specified threshold amounts to report, among other things, the annual quantity of the toxic chemical entering each environmental medium. Most facilities covered by CAA 112(r) are covered by one or more of these sections of EPCRA. Section 322 of EPCRA (codified in Part 350) allows facilities to claim only the chemical identity as trade secret.

case-by-case determinations on CBI claims. They also contended that ''emission data'' under section 114(c) does not extend to data on possible, as opposed to actual, emissions, and thus that RMP information concerning potential accidental releases would not qualify as ''emission data,'' which must be made available to the public.

As pointed out above, an important purpose of the chemical accident prevention program required by section 112(r) is to inform the public of the risk of accidents in their communities and the methods sources are employing to reduce such risks. EPA therefore believes that as much RMP data as possible should be available to the public as soon as possible. However, section 112(r)(7)(B)(iii) requires that RMPs be made ''available to the public under section 114(c),'' which provides for protection of trade secret information (other than emission data). Given the statute's direction to protect whatever trade secret information is contained in an RMP, EPA is not authorized to release such information even when the public's need for such information arguably outweighs a business' interest in its confidentiality. The Agency also cannot issue a ''corporate sunshine rule'' that conflicts with existing law requiring EPA (and other agencies) to protect trade secret information.

As explained above (and in more detail in the proposed rule), EPA examined each RMP data element to determine which would require information that might, depending on a business' circumstances, meet the CBI criteria set forth in EPA's regulations implementing section 114(c) and other information-related legal requirements. The point of this exercise was to both protect potential trade secret information and promote the public information purpose of RMPs by identifying which RMP information might reveal CBI in a particular case and by precluding CBI claims for information that could not reveal CBI in any case. EPA presented the results of its analysis and an explanation of why certain data elements could entail the reporting of CBI depending on a business' circumstances and why others could not. No commenter provided any specific examples or explanations that contradicted the Agency's rationale for its determinations of which data elements could or could not result in reporting of CBI.

However, EPA is deleting from the list of 40 CFR Part 68.151(b)(1) the reference to 40 CFR Part 68.160(b)(9), to allow for the possibility of the number of full-time employees at the stationary source to be claimed as CBI. Upon further review, EPA was unable to determine that providing the number of employees at the stationary source could never entail divulging information that could meet the test for CBI set forth in the Agency's comprehensive CBI regulations at 40 CFR Part 2. Therefore, EPA has removed this element from the list of data elements that can not be claimed CBI in Part 68. With this exception, EPA is promulgating the list of RMP data elements for which CBI claims are precluded, as proposed (Section 68.151(b)).

EPA's justifications for its specific CBI findings appear in an appendix to this preamble. A more detailed analysis of all RMP data elements and CBI determinations is available in the docket (see **ADDRESSES**). The Agency continues to find no reasonable basis for anticipating that the listed elements will in any case require a business to reveal CBI that is not ''emission data.'' The information required by each of the listed data elements either fails to meet the criteria for CBI set forth in EPA's CBI regulations at Part 2 or meets the Part 2 definition of ''emission data.'' In many cases, the information is available to the public through other reports filed with EPA, states, or local agencies (e.g., reports required by Emergency Planning and Community Right-to-Know Act (EPCRA) sections 312 and 313 provide general facility identification information and reports of most accidental releases are available through several Federal databases including EPA's Emergency Release Notification System and Accidental Release Information Program databases).

In order to preclude CBI claims for other data elements, the Agency would have to show that the information required by a data element either was ''emission data'' under section 114(c) or could not, under any circumstances, reveal CBI. As explained below, EPA does not believe such a showing can be made for any of the data elements not on the list. Therefore, CBI claims made for information required by data elements not on the list will be evaluated on a case-by-case basis according to the procedures contained in 40 CFR Part 2 (except that substantiation will have to accompany the claims, as discussed below).

The Agency agrees with the commenters who argued that information about potential accidental releases is not ''emission data'' under section 114(c). EPA's existing policy statement (see 56 FR 7042, Feb. 21, 1991) on what information may be considered ''emission data'' was developed to implement sections 110 and 114(a) of the CAA, which the Agency generally invokes when it seeks to gather technical data from a source about its actual emissions to the air. While the policy is not explicitly limited in its scope, EPA believes it would be inappropriate to apply it to RMP data elements concerning hypothetical, as opposed to actual, releases to the air. Under the definition of ''emission data'' contained in Part 2, information is ''emission data'' if it is (1) ''necessary to determine the identity, amount, frequency, concentration, or other characteristics * * * of any emission *which has been emitted* by the source,'' (2) ''necessary to determine the identity, amount, frequency, concentration, or other characteristics * * * of the emissions which, under an applicable standard or limitation, the source *was authorized to emit*;'' or (3) general facility identification information regarding the source which distinguishes it from other sources (40 CFR section 2.301(a)(2)(i) (emphasis added)). Under these criteria, EPA has concluded that only the RMP data elements relating to source-level registration information (sections 68.160(b)(1)–(6), (8)–(13)) and the five-year accident history (section 68.168) are ''emission data.'' Of the RMP data elements, only the five-year accident history involves actual, past emissions to the environment; the other data elements would not, therefore, qualify as ''emission data'' under the first prong of the Part 2 definition. Moreover, the data elements relating to a source's offsite consequence analysis, prevention program and emergency response program do not attempt to identify or otherwise reflect ''authorized'' emissions; the data elements instead reflect the source's *potential* for accidental releases. Accordingly, these data elements would not be ''emission data'' under the second prong of the definition. As for the third prong, some of the source-level data are ''emission data'' because they help identify a source. Most other RMP data elements are reported on a process level and are not generally used to distinguish one source from another.

The Agency believes it is unable to show that the remaining data elements could not, under any circumstances, reveal CBI. EPA continues to believe that it is theoretically possible for the remaining data elements (the elements not listed in section 68.151(b)) to reveal CBI either directly or through reverse engineering, depending on the circumstances of a particular case. At the same time, EPA believes that, in practice, the remaining data elements will rarely reveal CBI. The purpose of

the data in the RMP is for a source to articulate its hazards, and the steps it takes to prevent accidental releases. In general, the kinds of information specifying the source's hazards and risk management program are not likely to be competitively sensitive.

In particular, covered processes at the vast majority of stationary sources subject to the RMP rule are too common and well-known to support a CBI claim for information related to such processes. For example, covered public drinking water and wastewater treatment plants generally use common regulated substances in standard processes (i.e., chlorine used for disinfection). Also, covered processes at many sources involve the storage of regulated substances that the sources sell (e.g., propane, ammonia), so the processes are already public knowledge. Other covered processes involve the use of well-known combinations of regulated substances such as refrigerants. RMP information regarding these types of processes should not include CBI.

Even in the case of unusual or unique processes, it is generally unlikely that RMP information could be used to reveal CBI through reverse engineering. To begin with, required RMP information is general enough that it is unlikely to provide a basis for reverse engineering a process. For example, a source must report in its RMP whether overpressurization is a hazard and whether relief valves are used to control pressure, but it is not required to report information on actual pressures used, flow rates, chemical composition, or the configuration of equipment. Moreover, while RMP information may provide some data that could be used in an attempt to discover CBI information through reverse engineering, it typically will not provide enough data for such an attempt to succeed, because the source is not required to provide a detailed description of the chemistry or production volume of the process. Businesses claiming CBI based on the threat of reverse engineering will be required to show how reverse engineering could in fact succeed with the information that the RMP would otherwise make public, together with other publicly available information. A business unable to do so will have its claim denied.

While EPA is requiring that a source claiming a chemical's identity as CBI provide the generic category or class name of the chemical, the RMP does not require sources to provide information about the adverse health effects of the chemical. Chemicals were included in the section 112(r) program because they are acutely toxic or flammable; health effects related to chronic exposure were not considered because they are addressed by other rules (see List Rule at 59 FR 4481). EPA believes that generic names are sufficient to indicate the general health concerns from short-term exposures. Should a member of the public desire more information, EPA encourages the use of EPCRA section 322(h), which provides a means for the public to obtain information about the adverse health effects of a chemical covered by that statute, where the chemical's identity has been claimed a trade secret. The public will find this provision of EPCRA useful because most sources subject to the RMP rule are also subject to EPCRA.

3. Up-front Substantiation of CBI Claims

One commenter supported the proposal to require CBI claims to be substantiated at the time they are made. Another commenter stated that there is no compelling need to require up-front substantiation. The commenter stated that up-front substantiation would place a sizable burden on both industry and EPA and would be in direct conflict with the Paperwork Reduction Act. The commenter claimed that, with the exception of EPCRA, where a submitter is allowed to claim only one data element—chemical identity—as CBI, it is EPA's standard procedure not to require submitters to provide written substantiation unless a record has been requested. Further, the commenter stated that the Agency has not shown any reason for departing from that procedure in this rule.

EPA believes that requiring up-front substantiation of CBI claims made for RMP data has ample precedent, is fully consistent with the Agency's CBI regulations and the Paperwork Reduction Act, and is critical to achieving the public information purposes of the accident prevention program. EPCRA is not the only example of an up-front substantiation requirement. The Agency has also required up-front substantiation in several other regulatory contexts, including those where, like here, providing the public with health and safety information is an important objective [see e.g., 40 CFR section 725.94, 40 CFR section 710.38, and 40 CFR section 720.85 (regulations promulgated under Toxic Substances Control Act)].

Even under its general CBI regulations, the Agency need not wait for a request to release data to require businesses to substantiate their CBI claims. When EPA expects to get a request to release data claimed confidential, the Agency is to initiate ''at the earliest practicable time'' the regulations'' procedures for making CBI determinations (40 CFR section 2.204(a)(3)). Those procedures include calling on affected businesses to substantiate their claims (see 40 CFR section 2.204(e)). Since state and local agencies, environmental groups, academics and others have already indicated their interest in obtaining complete RMP data (see comments received on this rulemaking, available in the DOCKET), EPA fully expects to get requests for RMP data claimed CBI. Consequently, even if EPA did not establish an up-front substantiation requirement in this rule, under the Agency's general CBI regulations it could require businesses claiming CBI for RMP data to substantiate their claims without first receiving a request to release the data. Establishing an up-front requirement in this rule will simply allow EPA to obtain substantiation of CBI claims without having to request it in every instance.

Requiring up-front substantiation for RMP CBI claims is consistent with the Paperwork Reduction Act. Any burden posed by this requirement has already been evaluated as part of the Information Collection Request (ICR) associated with this rulemaking. EPA disagrees that up-front substantiation will impose a substantial or undue burden. As noted above, under EPA's current CBI regulations, a source claiming CBI could and probably would be required to provide substantiation for its claim, in view of the public interest in RMP information. A requirement to submit substantiation with the claim should thus make little difference to the source. Moreover, a source presumably does not make any claim of CBI lightly. Before filing a CBI claim, the source must first determine whether the claim meets the criteria specified in 40 CFR section 2.208. Up-front substantiation only requires that the source document that determination at the time it files its claim. Since it would be sensible for a source to document the basis of its CBI claim for its own purposes (e.g., in the case of a request for substantiation), EPA expects that many sources already prepare documentation for their CBI claims by the time they file them. Also, submitting substantiation at the time of claim reduces any additional burden later, such as reviewing the Agency's request, retrieving the relevant information, etc. Therefore, providing documentation at the time of filing should impose no additional burden.

In view of the public information function of RMPs, EPA believes that up-front substantiation is clearly warranted

for CBI claims made for RMP data. Up-front substantiation will ensure that sources filing claims have carefully considered whether the data they seek to protect in fact meets the criteria for protection. Given the public interest already expressed in RMP data, EPA expects that CBI claims for RMP data will have to be substantiated at some point. Up-front substantiation will save EPA and the public time and resources that would otherwise be required to respond to each CBI claim with a request for substantiation. EPA is therefore promulgating the up-front substantiation requirement as proposed.

4. State and Local Agency Access to Unredacted RMPs

One commenter objected to EPA's statement in the proposal that it would provide unredacted (unsanitized) versions of the RMPs to a state and local agency only upon meeting the criteria required by the EPA's CBI rules at 40 CFR Part 2.[4] The commenter, an association of fire fighters, argued that the Agency's position was inconsistent with CAA section 112(r)(7)(B)(iii), which provides that RMPs ''shall . . . be submitted to the Chemical Safety and Hazard Investigation Board [a federal agency], to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source . . . .'' The commenter claimed that this provision entitles the specified entities, including local fire departments, to receive unredacted RMPs without having to make the showings required by EPA's CBI regulations.

EPA is not resolving this issue today. The Agency has reviewed the relevant statutory text and legislative history, as well as analogous provisions of EPCRA, and believes that arguments can be made on both sides of this issue. While section 112(r)(7)(B)(iii) calls for RMPs to be submitted to states, local entities and the Board, it is not clear that Congress intended CBI contained in RMPs to be provided to those entities without ensuring appropriate protection of CBI. At stake in resolving this issue are two important interests—local responders' interest in unrestricted access to information that may be critical to their safety and effectiveness in responding to emergencies and businesses' interest in protecting sensitive information from their competitors. Before making a final decision on this issue, EPA believes it would benefit from further public input. Because EPA stated that it would not provide unredacted RMPs to states and local agencies, those interested in protecting CBI may not have considered it necessary to lay out the legal and policy arguments supporting their views. State and local agencies, many of which in the past have expressed concern about the potential administrative burden of receiving RMPs directly from sources, also did not comment on the issue. EPA has therefore decided to accept additional comments on this issue alone. (Additional comments on any other issues addressed in this rulemaking will not be considered or addressed, since the Agency is taking final action on them here.) Comments should be mailed to the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. In the meantime, unredacted RMPs will be available to states, local agencies and the Board under the terms of the Agency's existing CBI regulations at 40 CFR section 2.301(h)(3) (for state and local agencies) and 40 CFR section 2.209(c) (for the Board).

Section 112(r)(7)(B)(iii) states in relevant part:

> [RMPs] shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 114(c) of [the Act].

Section 114(c) provides for the public availability of any information obtained by EPA under the Clean Air Act, except for information (other than emissions data) that would divulge trade secrets.

From a public policy perspective, there are some obvious advantages to reading section 112(r)(7)(B)(iii) in the way the commenter suggests. Local fire departments and other local responders are typically the first to arrive at the scene of chemical accidents in their jurisdictions. RMP information that first responders could find helpful include chemical identity, chemical quantity, and potential source of an accident. Under EPA's regulations, however, any or all of this information could be claimed CBI. In addition, state and local authorities are often in the best position to assess the adequacy of a source's risk management program and to initiate a dialogue with the facility should its RMP indicate a need for improvement. However, state and local authorities' ability to provide this contribution to community safety would be impeded to the extent a source claimed key information as CBI. While states and local agencies may obtain information claimed CBI under EPA's CBI regulations (assuming they can make the requisite showing), the time required to obtain the necessary authority or findings from state or local and EPA officials could be substantial.

At the same time, there are also public policy reasons for ensuring protection of CBI contained in RMPs. Congress has in many statutes, including the CAA and EPCRA, provided for the protection of trade secrets to safeguard the competitive position of private businesses. Businesses' ability to maintain the confidentiality of trade secrets helps ensure competition in the U.S. economy and U.S. businesses' competitive position in the world economy. Protection of trade secrets also encourages innovation, which is an important contributor to economic growth.

A reading of section 112(r)(7)(B)(iii) that demands submission of unredacted RMPs to states, local entities, and the Board may lead to widespread public access to information claimed CBI. For purposes of section 112(r)(7)(B)(iii), ''any local agency or entity having responsibility for planning for or responding to accidental releases'' includes local emergency planning committees (LEPCs) established under EPCRA. Section 301(c) of EPCRA provides that LEPCs must include representatives from both the public and private sectors, including the media and facilities subject to EPCRA requirements. Submission of an unredacted RMP to an LEPC would thus entail release of CBI to some members of the public and potentially even competitors.[5] More generally, local agencies may not be subject to any legal requirement to protect CBI and may lack the knowledge and resources to address CBI claims. Arguably, it would be

[4] Section 2.301(h)(3) provides that a State or local government may obtain CBI from EPA under two circumstances: (1) it provides EPA a written opinion from its chief legal officer or counsel stating that the State or local agency has the authority under applicable State or local law to compel the business to disclose the information directly; or (2) the businesses whose information is disclosed are informed and the State or local government has shown to a EPA legal office's satisfaction that its disclosure of the information will be governed by State or local law and by ''procedures which will provide adequate protection to the interests of affected businesses.''

[5] EPA does not believe that submission of an RMP containing CBI to the statutorily specified entities would defeat a source's ability to claim information as CBI for purposes of section 114(c) and EPA's CBI regulations. Under those regulations, information that has been released to the public cannot be claimed CBI. Release of a RMP containing CBI to the entities specified by section 112(r)(7)(B)(iii), including LEPCs, would not constitute such a release. EPCRA similarly provides that disclosure of trade secret information to an LEPC does not prevent a facility from claiming the information confidential (see EPCRA section 322(b)(1)).

anomalous for Congress to require EPA to protect trade secrets contained in RMPs against release to the public only to risk divulging the same information by requiring submission of unredacted RMPs to a broad range of entities that may not have the need or capacity to protect CBI themselves. It would also appear inconsistent with the approach Congress took to protecting trade secrets in EPCRA, where Congress did not provide for release of trade secret chemical identity information to local agencies.

Relatedly, many state and local agencies objected to EPA's original proposal in the RMP proposed rulemaking (58 FR 54190, October 20, 1993) that sources submit RMPs directly to States, local agencies, and the Board, as well as EPA. They noted that managing the information contained in RMPs would be difficult without a significant expenditure of typically scarce resources. Many states and local agencies thus supported EPA's final decision to develop an electronic submission and distribution system that would allow covered sources to submit their RMPs to EPA, which would make them available to states, local agencies, and the Board, as well as the general public. If the statute is read to require submission of RMP information to state and local agencies, and the Board, to the extent it is claimed as CBI, the resource concerns raised by State and local agencies commenters likely would be raised to that extent again.

EPA also questions the extent to which states, local entities and the Board would be disadvantaged if they did not receive unredacted RMPs without making the showings required by EPA's CBI regulations. As noted earlier, EPA expects that relatively little RMP information will be CBI. RMP data will only rarely contain CBI, and the up-front substantiation will minimize the number of CBI claims it receives by ensuring that sources carefully examine the basis for any claims before submitting them. Consequently, the Agency believes that a state or local agency will rarely confront a redacted RMP.

Moreover, EPCRA provides state and local entities, including fire departments, with access to much of the pertinent data already. EPA's regulations under EPCRA cover a universe of sources and chemicals that includes most, if not all, the sources and substances covered by the RMP rule. The EPCRA regulations require reporting of some of the same information required by the RMP rule, including chemical identity. EPCRA withholds from public release only chemical identities that are trade secrets and the location of specific chemicals where a facility so requests. In practice, relatively few facilities have requested trade secret protection for a chemical's identity.

Additionally, EPCRA section 312(f) empowers local fire departments to conduct on-site inspections at facilities subject to EPCRA section 312(a) and obtain information on chemical location. Most facilities subject to EPCRA section 312(a) are also subject to the RMP rule. On-site inspections could also provide information on hazards and mitigation measures. In addition, EPCRA section 303(d)(3) authorizes LEPCs, which include representatives of fire departments, to request from facilities covered by EPCRA section 302(b) such information as may be necessary to prepare an emergency response plan and to include such information in the plan as appropriate. Some sources subject to the RMP rule are also covered by EPCRA section 302(b).

In light of the points made above, EPA questions whether section 112(r)(7)(B)(iii) should be interpreted to require submission of unredacted RMPs containing CBI to the statutorily specified entities without provision being made for protecting CBI. EPA invites the public to provide any additional comment or information relevant to interpreting the submission requirement of section 112(r)(7)(B)(iii).

5. Other CBI Issues

Two commenters disagreed with EPA's statement that a source cannot make a CBI claim for information available to the public under EPCRA or another statute. They claimed that a request for information under EPCRA cannot supersede the CBI provisions applicable to data collected under the authorities of the CAA or Toxic Substances Control Act or any other regulatory program.

EPA does not agree with this comment. Claims of CBI may not be upheld if the information is properly obtainable or made public under other statutes or authorities. For example, chemical quantity on site is available to the public under EPCRA Tier II reporting. In addition, under EPCRA section 303(d)(3), LEPCs have the authority to request any information they need to develop and implement community emergency response plans. If information obtained through such a request is included in the community plan, it will become available to the public under EPCRA section 324. Information obtainable or made public under EPCRA would not be eligible for CBI protection under 40 CFR section 2.208, which specifically excludes from CBI protection information already available to the public. Filing a CBI claim under the CAA or another statute does not protect information if it is legitimately requested and made public under other federal, state, or local law. Information obtainable or made public (through proper means) under existing statutes cannot be CBI under EPA's CBI regulations.

6. Actions Taken

In summary, the Agency is adding two sections (68.151 and 68.152) to Part 68. Section 68.151 sets forth the procedures for a source to follow when asserting a CBI claim and lists data elements that can not be claimed as CBI. This section also requires sources filing CBI claims to provide the information claimed confidential, in a format to be specified by EPA, instead of the unsanitized paper copy of the RMP as discussed in the proposal. Section 68.152 sets forth the procedures for substantiating CBI claims. Sources claiming CBI are required to submit their substantiation of their claims at the same time they submit their RMPs.

E. Other Issues

Two commenters asked why EPA had proposed to drop the phrase ''if used'' in section 68.165(b)(3) where the rule asks for the basis of the offsite consequence analysis results. EPA has decided to retain the language, since sources will have a choice of using either EPA's RMP guidance documents or a model. Where a model is used, the source will have to provide the name of the model. These commenters also asked why EPA proposed to drop (alternative releases only) from section 68.165(b)(13). EPA has also decided to retain the parenthetical language.

One commenter stated that EPA should allow sources to submit RMPs either electronically or in hard copy. The commenter stated that not allowing hard copy submissions will be burdensome on many sources who have never filed an electronic report to the government before. As stated in the April proposal, EPA is allowing sources to submit RMPs on paper. Paper submitters are asked to fill out a simple paper form to tell EPA why they are unable to file electronically.

Two commenters objected to placing offsite consequence analysis (OCA) data, particularly worst-case release scenarios, on the Internet, for security reasons. Issues related to public access to OCA data are beyond the scope of this rulemaking, as this action is limited to the issues discussed above. It does

not include decisions regarding how the public will access the OCA data elements of the RMPs. Statements in the preamble about EPA providing public access to RMP data are not intended to address which portions of the RMP data will be electronically available.

A number of commenters were concerned about a statement EPA made in the preamble to the proposed rule regarding the definition of ''process'', and stated that EPA's interpretation of ''process'' is not consistent with the interpretation the Occupational Safety and Health Administration (OSHA) uses in its process safety management (PSM) standard (29 CFR 1910.119). In this rulemaking, EPA did not propose any changes to the definition of process nor is it adopting any changes to the definition. As EPA stated in the preamble to the final RMP rule, it will interpret ''process'' consistently with OSHA's interpretation of that term (29 CFR 1910.119). Therefore, if a source is subject to the PSM rule, the limits of its process(es) for purposes of OSHA PSM will be the limits of its process(es) for purposes of RMP (except in cases involving atmospheric storage tanks containing flammable regulated substances, which are exempt from PSM but not RMP). If a source is not covered by OSHA PSM and is complicated from an engineering perspective, it should consider contacting its implementing agency for advice on determining process boundaries. EPA and OSHA are coordinating the agencies' approach to common issues, such as the interpretation of ''process''.

F. Technical Corrections

When Part 68 was promulgated, the text of section 68.79(a), was drawn from the OSHA PSM standard, but it was not revised to reflect the different structure of EPA's rule. The OSHA PSM standard is contained in a single section; EPA's Program 3 prevention program is contained in a subpart. Rather than referencing ''this section,'' the paragraph should have referenced the ''subpart.'' Therefore, as proposed, EPA is changing ''section'' to ''subpart'' in section 68.79(a).

Under section 68.180(b), EPA intended that all covered sources report the name and telephone number of the agency with which they coordinate emergency response activities, even if the source is not required to have an emergency response plan. However, the rule refers only to coordinating the emergency plan. In this action, EPA is revising this section to refer to the local agency with which emergency response activities and the emergency response plan is coordinated.

IV. Section-by-Section Discussion of the Final Rule

In Section 68.3, Definitions, the definition of SIC is removed and replaced by the definition of NAICS.

Section 68.10, Applicability, is revised to replace the SIC codes with NAICS codes, as discussed above.

Section 68.42, Five-Year Accident History, is revised to require the percentage concentration by weight of regulated toxic substances released in a liquid mixture and the five- or six-digit NAICS code that most closely corresponds to the process that had the release. The phrase ''five- or six-digit'' has been added before the NAICS code to clarify the level of detail required for NAICS code reporting.

Section 68.79, Compliance Audits, the word ''section'' in paragraph (a) is replaced by ''subpart.''

Section 68.150, Submission, is revised by adding a paragraph to state that procedures for asserting CBI claims and determining the sufficiency of such claims are provided in new Sections 68.151 and 68.152.

Section 68.151 is added to set forth the procedures to assert a CBI claim and list data elements that may not be claimed as CBI, as discussed above.

Section 68.152 is added to set forth procedures for substantiating CBI claims, as proposed.

Section 68.160, Registration, is revised by adding the requirements to report the method and description of latitude and longitude, replacing SIC codes with five- or six-digit NAICS codes, and adding the requirement to report Title V permit number, when applicable. This section is also revised to include optional data elements. The phrase ''five- or six-digit'' has been added before NAICS code to clarify the level of detail required for NAICS code reporting.

Section 68.165, Offsite Consequence Analysis, is revised by adding the requirement that the percentage weight of a regulated toxic substance in a liquid mixture be reported.

Section 68.170, Prevention Program/Program 2, is revised to replace SIC codes with five- or six-digit NAICS codes, as is Section 68.175.

Section 68.180, Emergency Response Program, is revised to clarify that paragraph (b) covers both the coordination of response activities and plans, as proposed.

V. Judicial Review

The proposed rule amending the accidental release prevention requirements; under section 112(r)(7) was proposed in the **Federal Register** on April 17, 1998. This **Federal Register** action announces EPA's final decision on the amendments. Under section 307(b)(1) of the CAA, judicial review of this action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before March 8, 1999. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VI. 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–98–08 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, 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 (E.O.) 12866, [58 FR 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 E.O. 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 E.O.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

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, copies of 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 to the development of regulatory proposals containing significant unfunded mandates.''

EPA has concluded that this rule may create a nominal mandate on State, local or tribal governments and that the Federal government will not provide the funds necessary to pay the direct costs incurred by these governments in complying with the mandate. Specifically, some public entities may be covered sources and will have to add the new data elements to their RMP. In developing this rule, EPA consulted with state, local and tribal governments to enable them to provide meaningful and timely input in the development of this rule. Even though this rule revises Part 68 in a way that does not significantly change the burden imposed by the underlying rule, EPA has taken efforts to involve state and local entities in this regulatory effort. Specifically, much of the rule responds to issues raised by the Electronic Submission Workgroup discussed above, which includes State and local government stakeholders. In addition, EPA has recently conducted seminars with tribal governments; however, there were no concerns raised on any issues that are covered in this rule. EPA discussed the need for issuing this regulation in sections II and III in this preamble. Also, EPA provided OMB with copies of the comments to the proposed 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 final rule 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 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. Two of the amendments made by this rule, the addition of RMP data elements and the conversion of SIC codes to NAICS codes, impose only minimal burden on any sources that may be owned or operated by tribal governments, such as drinking water and waste water treatment systems. The third amendment made by this rule addresses the procedures for submission of confidential business information in the RMP. The sources that are mentioned above handle chemicals that are known to public (e.g., chlorine for use of disinfection, propane used for fuel, etc.). EPA does not, therefore, expect RMP information on these types of processes to include CBI, so any costs related to CBI will not fall on Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Notwithstanding the non-applicability of E. O. 13084, EPA has recently conducted seminars with the tribal governments. However, there were no concerns raised on any issues that are covered in this rule.

F. 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 action will not have a significant economic impact on a substantial number of small entities. Two of the amendments made by this rule, the addition of RMP data elements and the conversion of SIC codes to NAICS codes, impose only minimal burden on small entities. Moreover, those small businesses that claim CBI when submitting the RMP will not face any costs beyond those imposed by the existing CBI regulations. Even considering the costs of CBI substantiation, however, there is no significant economic impact on a substantial number of small entities. EPA estimates that very few small entities (approximately 500) will claim CBI and that these few entities represent a small fraction of the small entities (less than 5 percent) affected by the RMP rule. Finally, EPA estimates that those small businesses filing CBI will experience a cost which is significantly less than one percent of their annual sales. For a more detailed analysis of the

small entity impacts of CBI submission, see Document Number, IV-B–02, available in the docket for this rulemaking (see **ADDRESSES** section).

G. Paperwork Reduction

1. General

The information collection requirements in this rule have been 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. 1656.05) and a copy may be obtained from Sandy Farmer, by mail at Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M St, SW, Washington, DC 20460, by e-mail 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 submission of the RMP is mandated by section 112(r)(7) of the CAA and demonstrates compliance with Part 68 consistent with section 114(c) of the CAA. The information collected also will be made available to state and local governments and the public to enhance their preparedness, response, and prevention activities. Certain information in the RMP may be claimed as confidential business information under 40 CFR Part 2 and Part 68.

This rule will impose very little burden on affected sources. First, EPA estimates that the new data elements will require only a nominal burden, .25 hours for a typical source, because latitude and longitude method and description will be selected from a list of options, the Title V permit number is available to any source to which Title V applies, and the percentage weight of a toxic substance in a liquid mixture is usually provided by the supplier of the mixture. Second, the NAICS code provision is simply a change from one code to another.[6] Third, as discussed above in the preamble, EPA believes that the CBI provisions of this rule will add no additional burden beyond what sources otherwise would face in complying with the CBI rules in 40 CFR Part 2. The Agency has calculated the burden of substantiations made for purposes of this rule below.

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 system 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.

2. CBI Burden

In the Notice of Proposed Rulemaking for these amendments, EPA proposed to amend existing 40 CFR Part 68 to add two sections which would clarify the procedures for submitting RMPs that contain confidential business information (CBI). As proposed, CBI would be handled in much the same way as it presently is under other EPA programs, except that EPA would require sources claiming CBI to submit documentation substantiating their CBI claims at the time such claims were made and EPA also would not permit CBI claims for certain data elements which clearly are not CBI. Aside from these procedural changes, however, the proposed rule was substantively identical to the existing rules governing the substantiation of CBI claims, presently codified in 40 CFR Part 2.

At the time it proposed these amendments, EPA estimated the public reporting burden for CBI claims to be 15 hours for chemical manufacturers with Program 3 processes, the only kinds of facilities that EPA expects to be able to claim CBI for any RMP data elements. This estimate was premised upon EPA's assessment that it would require 8.5 hours per claim to develop and submit the CBI substantiation and 6.5 hours to complete an unsanitized version of the RMP, for a total of 15 hours. EPA also estimated that approximately 20 percent of the 4000 chemical manufacturers (out of 64,200 stationary sources estimated to be covered by the RMP rule) may file CBI claims (800 sources). The 800 sources represent a conservative projection based on the Agency's experience under EPCRA program. Consequently, the total annual public reporting burden for filing CBI claims was estimated to be approximately 12,000 hours over three years (800 facilities multiplied by an average burden of 15 hours), or an annual burden of 4,000 hours (Information Collection Request No. 1656.04).

a. Comment received. EPA received one comment on the ICR developed for the proposed rule, opposing up-front substantiation of any CBI claims. The commenter stated that ''[t]his is a major departure from standard EPA procedure, and would impose a substantial and unjustified burden for several years.'' The commenter further added that up-front substantiation would significantly increase the burden of this rule, and that up-front substantiation unnecessarily increases the volume and potential loss of CBI documents. The commenter also stated that the estimate of 15 hours for chemical manufacturers ''seems unreasonably low,'' and cited the EPA burden estimate of 27.7 to 33.2 hours per claim (with an average of 28.8) under the trade secret provisions of EPCRA.

In the preamble to the proposed rule, EPA estimated that 20 percent of the 4,000 chemical manufacturers will file a CBI claim. The commenter contends that ''[t]he EPA analysis * * * excludes facilities in other industries that will need to file CBI claims.''

Finally, the commenter stated that claiming multiple data elements as CBI will increase reporting burden.

b. EPA response. Burden Estimates: EPA disagrees with these comments. As pointed out above, the requirement to submit up-front substantiation of CBI claims imposes no additional burden. In addition, the total burden of the CBI provisions of this rule are not understated. EPA has re-examined its analysis in light of the commenter's concerns and has determined—contrary to the commenter's claim—that its initial estimate of the total burden associated with preparing and claiming CBI was likely too conservative. As explained below, the Agency's best available information indicates that the process of documenting and submitting a claim of CBI should impose a burden of approximately 9.5 hours per CBI claimant.

First, EPA believes that the requirement to submit, at the time a source claims information as CBI,

[6] EPA intends to provide several outreach mechanisms to assist sources in identifying their new NAICS code. RMP*Submit will provide a ''pick list'' that will make it easier for sources to find the appropriate code. Also, selected NAICS codes are included in the General Guidance for Risk Management Programs (July 1998) and in the industry-specific guidance documents that EPA is developing. EPA will also utilize the Emergency Planning and Community Right-to-Know Hotline at 800–424–9346 (or 703–412–9810) to assist sources in determining the source's NAICS codes.

substantiation demonstrating that the material truly is CBI imposes no burden on sources beyond that which presently exists under EPA's CBI regulations in Part 2. In order to decide whether they might properly claim CBI for a given piece of information, a source must determine if the criteria stated in section 2.208 of 40 CFR Part 2 are satisfied. Naturally, a source goes through this process before a CBI claim is made. EPA agrees that most programs do not require the information that forms the basis for the substantiation to be submitted at the time of the claim; however, a facility must still determine whether or not a claim can be substantiated. Because existing rules require sources to formulate a legitimate basis for claiming CBI, even if those rules do not require immediate documentation, and because the Agency fully expects requests for RMP information which will necessitate sources' submitting such documentation, EPA believes that up-front submission will not increase the burden of the regulation.

Second, in response to the commenter's claim that the Agency had underestimated the total burden associated with CBI claims, EPA undertook a review of recent information collection requests (ICRs) covering data similar to that required to be submitted in an RMP. Initially, EPA examined the ICR prepared for Part 2 itself (ICR No. 1665.02, OMB Control No. 2020–0003). Under an analysis contained in the Statement of Support for the ICR, the Agency estimated that it takes approximately 9.4 hours to substantiate claims of CBI, prepare documentation, and submit such documentation to EPA. Next, the Agency reviewed a survey conducted by the Agency (under Office of Management and Budget clearance #2070–0034), to present the average burden associated with indicating confidential business information claims for certain data elements under the proposed inventory update rule (IUR) amendment under TSCA section 8. This survey specifically asked affected industry how long it would take to prepare CBI claims for two data elements—chemical identity and production volume range information. Part 68 also requires similar information (e.g., chemical identity and maximum quantity in a process) to be included in a source's RMP and, indeed, EPA anticipates that they will be the data elements most likely to be claimed CBI. The average burden estimates for chemical identity were between 1.82 and 3.13 hours, and the average burden estimates for production volume in ranges were between 0.87 and 2.08 hours. Thus, assuming that the average source claims both chemical identity and the maximum quantity in a process as CBI, a conservative estimate for the reporting burden would be 5.21 hours. Finally, EPA examined the burden estimate upon which it relied at proposal. That estimate predicted that the average CBI claim would take 15 hours, of which 8.5 would be developing and submitting the CBI claim, and 6.5 would be completing an unsanitized version of the RMP. In view of EPA's current plan not to require a source claiming CBI to submit a full, unsanitized RMP, but instead to submit only the particular elements claimed as CBI, the Agency expects the latter burden to decrease to 1 hour, for a total burden of 9.5 hours.

In light of its extensive research of the burden hours involved in preparing and submitting CBI claims, EPA believes that the total burden estimate was not understated in the April proposal. Rather, other ICRs and the ICR proposal, combined with the changes to the method of documenting CBI claims, indicate that a burden estimate between 5.21 and 9.5 hours is appropriate for this final rule. EPA has selected the most conservative of these, 9.5 hours, in its ICR for this final rule.

EPA rejected one ICR's burden estimate as being inapplicable to the present rulemaking. Although the commenter urged the Agency to adopt the estimate associated with trade secret claims under EPCRA (28 hours), EPA believes that the estimates discussed above are more accurate for several reasons. First, the EPCRA figures are based upon a survey with a very small sample size, as compared to the TSCA survey cited previously. Second, most (if not all) of the facilities submitting RMPs are likely to already be reporting under sections 311 and 312 or section 313 of EPCRA, and many of the manufacturers submitting an RMP are subject to TSCA reporting requirements; thus, most sources likely to claim CBI for an RMP data element will have already done some analysis of whether or not such information would reveal legitimately confidential matter.

Other Facilities Can Claim CBI: The Agency does not agree with the commenter's claim that facilities other than chemical manufacturers might be expected to claim CBI for information contained in their RMPs. The other industries affected by the RMP rule (e.g., propane retailers, publicly owned treatment works) will not be disclosing in the RMP information that is likely to cause substantial harm to the business's competitive position. For example, covered public drinking water and wastewater treatment plants generally use common regulated substances in standard processes (i.e., chlorine used for disinfection). Also, covered processes at many sources involve the storage of regulated substances that the sources sell (e.g., propane, ammonia), so the processes are already public knowledge. Other covered processes involve the use of well-known combinations of regulated substances such as refrigerants. Therefore, it is not likely that these businesses would claim information as CBI.

As a point of comparison, EPA notes that of the 869,000 facilities that are estimated to be required to report under sections 311 and 312 of EPCRA, approximately 58 facilities have submitted trade secret claims for under those sections. For this reason, EPA believes the estimate of 800 sources may, in fact, be an overestimate of the number of sources claiming CBI.

Reporting Multiple Data Elements: The Agency disagrees with the commenters assertion that it has underestimated the reporting burden on sources' claiming multiple data elements as CBI. The burden figures stated above are based on the Agency's estimates of the average number of data elements that a typical source will likely claim CBI.

Public reporting of the new RMP data elements is estimated to require an average of .25 hours for all sources (64,200 sources) and substantiating CBI claims is estimated to take approximately 9.5 hours for certain chemical manufacturing sources (800 sources). The aggregate increase in burden over that estimated in the previous Information Collection Request (ICR) for part 68 is estimated to be about 23,650 hours over three years, or an annual burden of 7,883 hours for the three years covered by the ICR.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 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. The EPA has determined that the total nationwide capital cost for these rule amendments is zero and the annual nationwide cost for these amendments is less than $1 million. Thus, today's rule 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. Small governments are unlikely to claim information confidential, because sources owned or operated by these entities (e.g., drinking water and waste water treatment systems), handle chemicals that are known to public. The new data elements and the conversion of SIC codes to NAICS codes impose only minimal burden on these entities.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. 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.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective February 5, 1999.

APPENDIX TO PREAMBLE—DATA ELEMENTS THAT MAY NOT BE CLAIMED AS CBI

Rule element	Comment
68.160(b)(1) Stationary source name, street, city, county, state, zip code, latitude, and longitude, method for obtaining latitude and longitude, and description of location that latitude and longitude represent.	This information is filed with EPA and other agencies under other regulations and is made available to the public and, therefore, does not meet the criteria for CBI claims. It is also available in business and other directories.
68.160(b)(2) Stationary source Dun and Bradstreet number.	
68.160(b)(3) Name and Dun and Bradstreet number of the corporate parent company.	
68.160(b)(4) The name, telephone number, and mailing address of the owner/operator.	
68.160(b)(5) The name and title of the person or position with overall responsibility for RMP elements and implementation.	This information provides no information that would affect a source's competitive position.
68.160(b)(6) The name, title, telephone number, and 24-hour telephone number of the emergency contact.	This information is filed with state and local agencies under EPCRA and is made available to the public and, therefore, does not meet the criteria for CBI claims.
68.160(b)(7) Program level and NAICS code of the process.	This information provides no information that would affect a source's competitive position.
68.160(b)(8) The stationary source EPA identifier.	This information provides no information that would affect a source's competitive position.
68.160(b)(10) Whether the stationary source is subject to 29 CFR 1910.119.	This information provides no information that would affect a source's competitive position.
68.160(b)(11) Whether the stationary source is subject to 40 CFR Part 355.	Sources are required to notify the state and local agencies if they are subject to this rule; this information is available to the public and, therefore, does not meet the criteria for CBI claims.
68.160(b)(12) If the stationary source has a CAA Title V operating permit, the permit number.	This information will be known to state and federal air agencies and is available to the public and, therefore, does not meet the criteria for CBI claims.

APPENDIX TO PREAMBLE—DATA ELEMENTS THAT MAY NOT BE CLAIMED AS CBI—Continued

Rule element	Comment
68.160(b)(13) The date of the last safety inspection and the identity of the inspecting entity.	This information provides no information that would affect a source's competitive position.
68.165(b)(4) Basis of the results (give model name if used).	Without the chemical name and quantity, this reveals no business information.
68.165(b)(9) Wind speed and atmospheric stability class (toxics only).	This information provides no information that would affect a source's competitive position.
68.165(b)(10) Topography (toxics only)	Without the chemical name and quantity, this reveals no business information.
68.165(b)(11) Distance to an endpoint	By itself, this information provides no confidential information. Other elements that would reveal chemical identity or quantity may be claimed as CBI.
68.165(b)(12) Public and environmental receptors within the distance.	By itself, this information provides no confidential information. Other elements that would reveal chemical identity or quantity may be claimed as CBI.
68.168 Five-year accident history	Sources are required to report most of these releases and information (chemical released, quantity, impacts) to the federal, state, and local agencies under CERCLA and EPCRA; these data are available to the public and, therefore, do not meet the criteria for CBI claims. Much of this information is also available from the public media.
68.170(b), (d), (e)(1), and (f)–(k)	
68.175(b), (d), (e)(1), and (f)–(p) NAICS code, prevention program compliance dates and information.	NAICS codes and the prevention program compliance dates and information provide no information that would affect a source's competitive position.
68.180 Emergency response program	This information provides no information that would affect a source's competitive position.

List of Subjects in 40 CFR Part 68

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 29, 1998.

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 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(a)(1), 7661–7661f.

2. Section 68.3 is amended by removing the definition of SIC and by adding in alphabetical order the definition for NAICS to read as follows:

§ 68.3 Definitions.

* * * * *

NAICS means North American Industry Classification System.

* * * * *

3. Section 68.10 is amended by revising paragraph (d)(1) to read as follows:

§ 68.10 Applicability.

* * * * *

(d) * * *

(1) The process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or

* * * * *

4. Section 68.42 is amended by revising paragraph (b)(3), redesignating paragraphs (b)(4) through (b)(10) as paragraphs (b)(5) through (b)(11) and by adding a new paragraph (b)(4) to read as follows:

§ 68.42 Five-year accident history.

* * * * *

(b) * * *

(3) Estimated quantity released in pounds and, for mixtures containing regulated toxic substances, percentage concentration by weight of the released regulated toxic substance in the liquid mixture;

(4) Five- or six-digit NAICS code that most closely corresponds to the process;

* * * * *

5. Section 68.79 is amended by revising paragraph (a) to read as follows:

§ . 68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

* * * * *

6. Section 68.150 is amended by adding paragraph (e) to read as follows:

§ 68.150 Submission.

* * * * *

(e) Procedures for asserting that information submitted in the RMP is entitled to protection as confidential business information are set forth in §§ 68.151 and 68.152.

7. Section 68.151 is added to read as follows:

§ 68.151 Assertion of claims of confidential business information.

(a) Except as provided in paragraph (b) of this section, an owner or operator of a stationary source required to report or otherwise provide information under this part may make a claim of confidential business information for any such information that meets the criteria set forth in 40 CFR 2.301.

(b) Notwithstanding the provisions of 40 CFR part 2, an owner or operator of a stationary source subject to this part may not claim as confidential business information the following information:

(1) Registration data required by § 68.160(b)(1) through (b)(6) and (b)(8), (b)(10) through (b)(13) and NAICS code and Program level of the process set forth in § 68.160(b)(7);

(2) Offsite consequence analysis data required by § 68.165(b)(4), (b)(9), (b)(10), (b)(11), and (b)(12).

(3) Accident history data required by § 68.168;

(4) Prevention program data required by § 68.170(b), (d), (e)(1), (f) through (k);

(5) Prevention program data required by § 68.175(b), (d), (e)(1), (f) through (p); and

(6) Emergency response program data required by § 68.180.

(c) Notwithstanding the procedures specified in 40 CFR part 2, an owner or operator asserting a claim of CBI with respect to information contained in its RMP, shall submit to EPA at the time it submits the RMP the following:

(1) The information claimed confidential, provided in a format to be specified by EPA;

(2) A sanitized (redacted) copy of the RMP, with the notation ''CBI'' substituted for the information claimed confidential, except that a generic category or class name shall be substituted for any chemical name or identity claimed confidential; and

(3) The document or documents substantiating each claim of confidential business information, as described in § 68.152.

8. Section 68.152 is added to read as follows:

§ 68.152 Substantiating claims of confidential business information.

(a) An owner or operator claiming that information is confidential business information must substantiate that claim by providing documentation that demonstrates that the claim meets the substantive criteria set forth in 40 CFR 2.301.

(b) Information that is submitted as part of the substantiation may be claimed confidential by marking it as confidential business information. Information not so marked will be treated as public and may be disclosed without notice to the submitter. If information that is submitted as part of the substantiation is claimed confidential, the owner or operator must provide a sanitized and unsanitized version of the substantiation.

(c) The owner, operator, or senior official with management responsibility of the stationary source shall sign a certification that the signer has personally examined the information submitted and that based on inquiry of the persons who compiled the information, the information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential business information would, if disclosed, reveal trade secrets or other confidential business information.

9. Section 68.160 is amended by revising paragraphs (b)(1), (b)(7), and (b)(12) and adding paragraphs (b)(14) through (b)(18) to read as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(1) Stationary source name, street, city, county, state, zip code, latitude and longitude, method for obtaining latitude and longitude, and description of location that latitude and longitude represent;

* * * * *

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process;

* * * * *

(12) If the stationary source has a CAA Title V operating permit, the permit number; and

* * * * *

(14) Source or Parent Company E-Mail Address (Optional);

(15) Source Homepage address (Optional)

(16) Phone number at the source for public inquiries (Optional);

(17) Local Emergency Planning Committee (Optional);

(18) OSHA Voluntary Protection Program status (Optional);

10. Section 68.165 is amended by revising paragraph (b) to read as follows:

§ 68.165 Offsite consequence analysis.

* * * * *

(b) The owner or operator shall submit the following data:

(1) Chemical name;

(2) Percentage weight of the chemical in a liquid mixture (toxics only);

(3) Physical state (toxics only);

(4) Basis of results (give model name if used);

(5) Scenario (explosion, fire, toxic gas release, or liquid spill and evaporation);

(6) Quantity released in pounds;

(7) Release rate;

(8) Release duration;

(9) Wind speed and atmospheric stability class (toxics only);

(10) Topography (toxics only);

(11) Distance to endpoint;

(12) Public and environmental receptors within the distance;

(13) Passive mitigation considered; and

(14) Active mitigation considered (alternative releases only);

11. Section 68.170 is amended by revising paragraph (b) to read as follows:

§ 68.170 Prevention program/Program 2.

* * * * *

(b) The five- or six-digit NAICS code that most closely corresponds to the process.

* * * * *

12. Section 68.175 is amended by revising paragraph (b) to read as follows:

§ 68.175 Prevention program/Program 3.

* * * * *

(b) The five- or six-digit NAICS code that most closely corresponds to the process.

* * * * *

13. Section 68.180 is amended by revising paragraph (b) to read as follows:

§ 68.180 Emergency response program.

* * * * *

(b) The owner or operator shall provide the name and telephone number of the local agency with which emergency response activities and the emergency response plan is coordinated.

* * * * *

[FR Doc. 99–231 Filed 1–5–99; 8:45 am]

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federal register

Tuesday
January 6, 1998

Part IV

Environmental Protection Agency

40 CFR Part 68

List of Regulated Substances and Thresholds for Accidental Release Prevention; Final Rule

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–O8. 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.

* * * * *

Crude oil means any naturally occurring, unrefined petroleum liquid.

* * * * *

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

* * * * *

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both, 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–O8, 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–O8, 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.

* * * * *

§ 68.130 [Amended]

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

[FR Doc. 98–267 Filed 1–5–98; 8:45 am]

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federal register

Monday
August 25, 1997

Part VIII

Environmental Protection Agency

40 CFR Part 68

List of Regulated Substances and Thresholds for Accidental Release Prevention; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–5881–8]

List of Regulated Substances and Thresholds for Accidental Release Prevention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to modify the list of regulated substances and threshold quantities authorized by section 112(r) of the Clean Air Act as amended. EPA is vacating the listing and related threshold for hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. The current listing and threshold for all other regulated substances, including hydrochloric acid solutions with 37% or greater concentrations and the listing and threshold for anhydrous hydrogen chloride, are unaffected by today's rulemaking. Today's action implements, in part, a settlement agreement between EPA and the General Electric Company (GE) to resolve GE's petition for review of the rulemaking listing regulated substances and establishing thresholds under the accidental release prevention regulations.

DATES: This rule is effective August 25, 1997.

ADDRESSES: Docket: The docket for this rulemaking is A–97–28. 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: Sicy Jacob, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, MC 5104, 401 M St., SW, Washington, DC 20460, (202) 260–7249.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include the following types of facilities if the facility has more than the 15,000-pound threshold quantity of hydrochloric acid solutions with concentrations of less than 37% hydrogen chloride.

Category	Example of regulated entities
Chemical manufacturers.	Industrial inorganics.
Petrochemical	Plastics and resins.
Other manufacturers.	Pulp and paper mills, primary metal production, fabricated metal products, electronic and other electric equipment, transportation equipment, industrial machinery and equipment, food processors.
Wholesalers ..	Chemical distributors.
Federal sources.	Defense 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. This table lists types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could be affected. To determine whether your facility is affected by this action, you should carefully examine 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 to the rule:

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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 (Act) as amended.

B. Regulatory History

The Clean Air Act (CAA or Act), 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''). This list included hydrochloric acid solutions with concentrations of 30% or greater. Such solutions were assigned a threshold quantity of 15,000 pounds. 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 General Electric Company (GE) filed a petition for judicial review of the List Rule regarding EPA's listing criteria under the List Rule, the listing of certain substances in the List Rule, the setting of threshold quantities for certain substances in particular and all regulated toxic substances generally, and the petition process for adding and deleting regulated substances to the list. Recognizing that the public's interest would best be served by settlement of all issues raised in this litigation, GE and EPA agreed to a settlement on April 7, 1997. Under the terms of the settlement agreement, on May 22, 1997 (62 FR 27992), EPA proposed to vacate the listing and related threshold for hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. EPA is today taking final action on this proposal.

II. Discussion of the Final Rule and Public Comments

Today's final rule adopts without modification the May 22, 1997 (62 FR 27992), proposal to vacate provisions of the accidental release prevention regulations that specifically address hydrochloric acid solutions with less than 37% hydrogen chloride. The basis

and purpose of this rulemaking is set out in the above referenced proposal. As discussed in the proposal, this action addresses the essential element of the dispute between EPA and GE while eliminating the collateral uncertainty that would exist about the regulatory status of the remaining chemicals if the litigation proceeded. EPA has vigorously advocated responsible accident prevention efforts by industry even before enactment of section 112(r). The Agency is concerned that prolonging this dispute may encourage owners and operators of sources who are solely concerned about regulatory compliance to defer engaging in responsible accident prevention activities. By implementing the settlement agreement with GE and by implementing the settlement agreements reached in the other two challenges to the List Rule, EPA will be able to retain on the list of regulated substances nearly all of the chemicals originally listed and eliminate uncertainty about their regulatory status. As also discussed in the proposal, the general duty clause of section 112(r)(1) and the retention on the list of solutions with concentrations of 37% or greater ensures that today's rule is protective of public health in several respects.

EPA received 11 letters commenting on the proposed rule. All of the comments were from industry and trade associations. All commenters supported vacating the listing of hydrochloric acid in concentration below 37%. Several of them specifically supported EPA's stated position that this proposal is protective of public health in several respects and that this action will eliminate uncertainty in the regulated community regarding RMP compliance for hydrochloric acid solutions.

Several commenters brought up technical issues regarding the basis for listing hydrochloric acid in aqueous solution. EPA stated in the proposed rule that it was not reopening the rulemaking record on the listing of hydrochloric acid within the range of 30% to 37%. Any technical issues related to the listing of hydrochloric acid solutions will be addressed if EPA undertakes future regulatory actions regarding such solutions. In agreeing to the settlement with GE and in this related rulemaking, EPA has not conceded or acknowledged any technical deficiencies in its original listing of HCl solutions with less than 37% concentration.

One commenter said that solutions at 37%, as well as those below 37%, should be delisted. EPA considers this issue outside the scope of the current rulemaking. The listing of solutions at 37% and above was decided in the original List Rule and was not reopened by this rulemaking; objections to the listing of 37% solutions should have been made by seeking review of the original List Rule and are now untimely. To the extent that the commenter wishes to reopen the technical merits of listing solutions that are precisely 37% HCl, EPA would address that issue along with other technical issues if EPA were to take further action on hydrochloric acid solutions.

Two commenters referred to comments submitted on the original proposal to list hydrochloric acid solution. EPA addressed comments on the proposed List Rule when it promulgated the final rule (January 31, 1994).

Several commenters questioned the accident history of hydrochloric acid solutions and stated that EPA's accident database does not support listing hydrochloric acid solutions. To the extent to which it is relevant, EPA will consider the up-to-date accident history if it takes any further regulatory actions on the listing of hydrochloric acid solutions.

One commenter stated that EPA overestimated the number of regulated sources that would not have to comply with the List rule as a result of this vacatur. EPA's estimate of 800 sources was based on preliminary, conservative assumptions that EPA used to determine that a regulatory impact analysis was not required and was not related to the basis for the proposal. The number and type of sources that are affected by a listing are irrelevant under sections 112(r)(3) and (4). The Agency recognizes that this estimate may represent a conservative picture of the effect of the rule on the regulated community.

One commenter stated his understanding that hydrochloric acid solutions of 36.94% would not be covered by the RMP rule. EPA confirms that all solutions that can be accurately measured at less than 37% are excluded.

EPA also proposed on May 22, 1997, to extend the RMP rule compliance deadline for hydrochloric acid solutions with concentrations of 30% to 37% if EPA did not take final action to vacate the hydrochloric acid listing as proposed. Because EPA is vacating the listing of such solutions by the final action today, no action is necessary on this alternative proposal. If EPA were to relist these solutions in the future, then sources would have three years from the new listing to comply with the RMP rule.

Finally, as stated in the proposal, EPA wishes to clarify that this rule will not affect in any way the listing of anhydrous hydrogen chloride. Anhydrous hydrogen chloride will retain its 5000-pound threshold. Threshold determination provisions for regulated toxic substances would apply to anhydrous hydrogen chloride. Anhydrous mixtures of hydrogen chloride would be subject to the mixture provisions for regulated toxic substances. Aqueous mixtures of hydrochloric acid would be affected to the extent that the minimum concentration cutoff would be revised.

Based on the reasons discussed above, EPA is vacating the listing in part 68 of hydrochloric acid solutions at concentrations of less than 37% (from 30% up to 37%) hydrogen chloride. Solutions of 37% or greater will not be affected by today's rule and remain on the list. In addition, EPA is vacating other provisions of the accidental release prevention regulations insofar as they apply to hydrochloric acid solutions at concentrations less than 37% hydrogen chloride. For example, the reference to ''hydrochloric acid (conc 30% or greater)'' in the toxic endpoint table for 40 CFR part 68 will be revised to refer to concentrations of 37% or greater.

III. 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.

IV. 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 will reduce the range of hydrochloric acid solutions listed under part 68 and thus reduce the number of stationary sources subject to part 68.

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), Pub. L. 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).

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention, Extremely hazardous substances, Incorporation by reference, Intergovernmental relations, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 19, 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

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

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

§ 68.130 Tables 1 and 2 [Amended]

2. In § 68.130 List of substances, Table 1 is amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' to ''Hydrochloric acid (conc 37% or greater).''

3. In § 68.130 List of substances, Table 2 is amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' to ''Hydrochloric acid (conc 37% or greater),'' and by adding a note ''d'' between note ''c'' and ''e'' at the end of the table to read as follows:

''d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.''

Appendix A of Part 68 [Amended]

4. Appendix A of Part 68 is amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' to ''Hydrochloric acid (conc 37% or greater).''

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