

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

[FRL-6351-1]

**List of Regulated Substances and Thresholds for Accidental Release Prevention; Stay of Effectiveness for Flammable Hydrocarbon Fuels****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; stay of effectiveness.

**SUMMARY:** Pursuant to Clean Air Act (CAA) section 301(a)(1), 42 U.S.C. 7601(a)(1), the Agency is providing a six-month stay of the effectiveness of its Risk Management Plan (RMP) rule under CAA section 112(r) as it applies to processes containing no more than 67,000 pounds of certain flammable hydrocarbon fuels.

Elsewhere in the Proposed Rules section of today's **Federal Register**, EPA is proposing an exemption that mirrors the terms of today's stay. This exemption would result in such processes no longer being subject to the Chemical Accident Prevention requirements of 40 CFR part 68. The exemption would not apply to processes that manufacture the fuel, contain above a threshold quantity of another (non-fuel) regulated substance, or processes connected to, or co-located with, another (non-fuel) covered process at the facility.

This action provides a temporary stay while EPA completes rulemaking on the proposed exemption. While this stay is in effect, processes that would qualify for the proposed exemption are not subject to part 68. Today's stay is in addition to, and does not affect, the stay of the rule for propane processes recently entered by the U.S. Court of Appeals for the D.C. Circuit.

**EFFECTIVE DATE:** June 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** John Ferris, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office (5104), 401 M Street S.W., Washington, DC 20460 (202) 260-4043.

**SUPPLEMENTARY INFORMATION:****I. Background and Discussion**

In Part IV of today's **Federal Register**, EPA is proposing amendments to the regulations at 40 CFR part 68, establishing a chemical accident prevention program under Clean Air Act section 112(r). Readers should refer to that notice of proposed rulemaking for a complete discussion of the RMP regulations and the proposed amendment.

The proposed amendment, if promulgated, would add an exemption to 40 CFR 68.115 for processes containing up to 67,000 pounds of a listed flammable hydrocarbon fuel (e.g., propane, butane, ethane, etc.), provided that the process does not contain another listed substance over a threshold quantity, is not manufacturing the fuel, and is not co-located or interconnected to another (non-fuel) covered process. As explained in the notice proposing the exemption, EPA believes that such processes probably do not present risks warranting application of the comprehensive accident prevention requirements of the RMP rule. However, it is unlikely that EPA will be able to take final action on this proposal by June 21, 1999, the date by which stationary sources are required to comply with the RMP rule's requirements, including submission of risk management plans. This action provides a stay of the effectiveness of the rule's requirements for processes that would be affected by the proposed amendments, if promulgated, until December 21, 1999. If EPA does not promulgate the provisions of today's proposed rule by then, any source that has a process that would have been subject to the rule but for today's stay, must comply with the provisions of the RMP rule for the process by December 21, 1999. For sources that have multiple processes, only some of which are affected by today's stay, they must comply with the RMP rule by the June 21, 1999 deadline for the processes not affected.

EPA is providing this temporary stay because the Agency is conducting a rulemaking to determine whether the processes and sources affected by today's proposed rule should be subject to RMP requirements. EPA will need to evaluate comments on the proposed rule before taking final action. EPA believes that it has good cause to provide this temporary stay to provide a short period of time for the Agency to decide whether or not to promulgate today's proposed changes. EPA believes that requiring stationary sources to file risk management plans for the processes affected by today's proposal would pose an undue burden on these stationary sources while the Agency is deciding whether such reporting are necessary. EPA also believes that today's temporary stay will not significantly affect public health or welfare because, as explained in the proposal, the processes eligible for the stay meet criteria indicating that such processes are unlikely to pose a significant off-site risk. Furthermore, this temporary stay

does not affect a source's responsibilities under CAA section 112(r)(1), the general duty clause.

**II. Related Litigation**

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 recently entered a temporary stay of the RMP rule as it applies to propane (*The Chlorine Institute, Inc. v. Environmental Protection Agency*, 96-1279 and consolidated cases (Nos. 96-1284, 96-1288, and 96-1290), Order of April 27, 1999). Until further order of the Court, the RMP rule is not in effect with respect to propane. Any stationary source, or process at a stationary source, subject to the RMP rule only by virtue of propane is not, until further notice, subject to the RMP rule requirements, including those calling for a hazard assessment, accident prevention program, emergency response planning, and submission of (or inclusion in) an RMP by June 21, 1999.

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

It is important to note that the terms of the Court's stay are different in several respects from those of this temporary stay being issued by EPA. The Court's stay applies only to propane, while the temporary stay applies to all flammable hydrocarbon fuels, including propane. The Court's stay includes no caps or conditions; the temporary stay includes a cap and other conditions for eligibility. Finally, the Court's stay will last until further order of the Court. The temporary stay lasts only until December 21, 1999. If the Court lifts its stay before then, propane, along with the other flammable hydrocarbon fuels, would be exempt from the RMP rule in accordance with the terms of the temporary stay.

**II. 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. A99-18, and is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in ADDRESSES at the beginning of this document.

#### *B. Executive Order 12866*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a 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; rather, it stays the effective date for certain processes affected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68. 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 final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule stays the effective date for certain processes effected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68.

#### *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 stays the effective date for certain processes affected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68. 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 final rule because it is not subject to the Regulatory Flexibility Act. EPA has also determined that this rule will not have a significant negative economic impact on small entities. This rule does not require any stationary source to report additional elements in the RMP; instead, this rule stays the effective date for certain processes effected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68.

#### *G. Paperwork Reduction*

This rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act. This rule stays the effective date for certain processes effected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68.

#### *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.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule stays the effective date for certain processes effected by today's proposed rule. This action does not increase, nor decrease, the burden associated with 40 CFR part 68.

#### *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. Section 808 allows the issuing agency to make a good cause 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, EPA has made such a

good cause finding, including the reasons therefor, and established an effective date of June 21, 1999. 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 68**

Environmental protection, Chemicals, Chemical accident prevention.

Dated: May 21, 1999.

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

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is 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 68.2 is amended by adding paragraph (c) to read as follows:

#### **§ 68.2 Stayed provisions.**

\* \* \* \* \*

(c) Notwithstanding any other provision of this part, the effectiveness of part 68 is stayed from June 21, 1999 to December 21, 1999 with respect to regulated flammable hydrocarbon substances when the substance is intended for use as a fuel and does not exceed 67,000 pounds in a process that is not manufacturing the fuel, does not contain greater than a threshold quantity of another regulated substance, and is not collocated or interconnected to another covered process.

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