

issued pursuant to § 112(r)(3), is used to determine which facilities must comply with the accident prevention regulations.

On January 31, 1994, EPA published a final rule which included the list of regulated substances and thresholds required under § 112(r). 59 FR 4478 (Jan. 31, 1994). The final rule became effective on March 2, 1994. Various compressed gases, including chlorine, appear on the list of regulated toxic substances. In that final rule, EPA defines "stationary source" as follows:

Stationary source means any building, 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. *A stationary source includes transportation containers that are no longer under active shipping papers and transportation containers that are connected to equipment at the stationary source for the purpose of temporary storage, loading, or unloading.*

59 FR 4478, 4493 (definition of "stationary source") (to be codified at 40 CFR 68.3) (emphasis added). This definition applies to all regulations issued under § 112(r). In the preamble to the final rule, EPA states:

[F]or purposes of regulations under section 112(r), the term stationary source does not apply to transportation conditions, which would include storage incident to such transportation, of any 112(r) regulated substance. \* \* \* [T]ransportation containers that are not under active shipping papers are not considered by EPA to be in storage incident to transportation; the agency considers the definition of stationary source to include such containers.

59 FR 4490.

Section 112(r)(7), 42 U.S.C. 7412(r)(7), also requires EPA to establish "reasonable regulations and appropriate guidance" to provide for the prevention and detection of accidental releases and for responses to such releases. These regulations must include, as appropriate, provisions concerning facilities' use, operation, repair, and maintenance of equipment to monitor, detect, inspect, and control releases, including training of personnel in the use and maintenance of equipment or in the conduct of periodic inspections. The regulations must require facility owners or operators to prepare and implement risk management plans that provide for compliance with regulations for managing risk and include a hazard assessment, a prevention program, and an emergency response program. The risk management plans developed under those programs must be registered with

EPA, and provided to the Chemical Safety and Hazard Investigation Board established under the CAA Amendments, State governments, local planning authorities, and the public on request.

On October 20, 1993, EPA published an NPRM in the **Federal Register** proposing regulations that would require stationary source owners or operators that manufacture, process, use, store or otherwise handle regulated substances in quantities that exceed specified thresholds to develop and implement risk management programs, as required under § 112(r)(7). As part of the emergency response element of the risk management program, EPA proposes that the emergency response plan be coordinated with the LEPC plans required under SARA Title III for chemical releases. On request of the LEPC, the owner of a facility would be required to provide the LEPC with information necessary to develop and implement the LEPC plan. This requirement is a restatement of the mandate in § 303 of SARA Title III, 42 U.S.C. 11003, that the owner of a facility provide information to an LEPC, on request, and is proposed to ensure that the facility and community planning efforts are coordinated.

Many States, including California, have developed or are developing programs for control of hazardous air pollutants and for prevention and mitigation of accidental releases. Under § 112(r), these programs, developed to address specific State needs, may continue to exist and even differ from Federal rules being developed by EPA under § 112. However, State programs must be approved by EPA. State accidental release prevention programs, at a minimum, must be at least as stringent as the Federal regulations.

Section 112(l), 42 U.S.C. 7412(l), gives EPA the authority to approve and delegate Federal authority to the States. In the preamble of the October 20, 1993 NPRM, EPA recognizes that several States, including California, have existing risk management programs that address the same basic elements that EPA proposed in its NPRM. EPA recognizes that the existing State programs will need some revisions to meet the requirements under the CAA Amendments, but expects that most of the needed changes will involve the listing of chemicals and adjusting of thresholds. EPA issued a final rule addressing the approval of State programs and the delegation of Federal authorities on November 26, 1993. 58 FR 62262 (to be codified at 40 CFR Part 63, Subpart E). Section 112(l) also requires EPA to develop guidance for

States, especially for the registration of facilities.

EPA's § 112(r) regulations apply in every State until a State has sought and received EPA approval of its own program. Once a State program is approved by EPA, the State may implement and enforce its rules and programs in place of certain Federal rules promulgated under § 112(r), with the EPA-approved State rules and programs being Federally enforceable. Consequently, EPA's regulation of tank car unloading to a manufacturing process, as part of its implementation of § 112(r), is applicable to any State that does not have a risk management program that is approved by EPA.

In its definition of "stationary source," EPA clearly asserts authority over transportation containers that are no longer under active shipping papers and over transportation containers that are connected to equipment at the stationary source for the purpose of temporary storage, loading, or unloading. EPA regulates this activity as part of its statutory mandate under the CAA Amendments to issue regulations regarding hazardous materials accident prevention.

Section 310 of the Clean Air Act, as amended, states that "this Act shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the [EPA] Administrator, or any other Federal officer, department, or agency." 42 U.S.C. 7610. Therefore, EPA's regulation of consignee unloading of hazardous materials may not supersede or conflict with RSPA's regulation of the same activity. But, it may coexist with it.

EPA's regulations and proposed regulations under § 112(r) focus on accident prevention and risk management of hazardous materials by requiring owners of facilities that handle certain hazardous materials above threshold amounts to: (1) register the name of the facility with EPA; (2) develop and implement a risk management program that addresses hazard assessment, prevention and emergency response; and (3) develop a risk management plan for submission to certain Federal, State and local entities. On the other hand, RSPA's tank car unloading regulation (49 CFR 174.67) applies to any person that unloads a tank car containing any material classed as a hazardous material under the HMR, and focuses solely on the physical aspects of unloading the tank car. EPA's regulation of tank car unloading does not conflict with RSPA's regulation of the same activity.