

CAA 112(r) RMP Program: Unpacking the Transportation Exemption and Fuels Exclusion.

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Section 112(r) of the CAA RMP Rule

- Section 112(r) of the CAA RMP rule applies to "an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115." 40 C.F.R. § 68.10. The owners and operators of stationary sources have a **general duty** to identify hazards which may result from such releases, to design and maintain a safe facility and to minimize the consequences of accidental releases.

Stationary Source

- “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.

Transportation Exemption

- Transportation exemption: The term stationary source does not apply to transportation, such as transportation of natural and other gas by pipeline, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance. The term stationary source also does not include naturally occurring hydrocarbon reservoirs
 - The transportation exemption is included in a separate definition of stationary source listed under the RMP regulations.
- However, the term stationary source does include transportation containers used for storage not incident to transportation, transportation containers connected to equipment at a stationary source for loading or unloading, and storage in atmospheric storage tanks.

Threshold Quantity

- “Threshold quantity” means the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act as amended, listed in § 68.130
 - **Naturally occurring hydrocarbon exemption:** 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.
 - This exemption includes any combination of condensate, crude oil, field gas, and/or produced water

Regulated Substance

- “Regulated substance” is any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130
 - **Fuel exclusion:** “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.” 40 C.F.R. § 68.126.
 - Flammable fuels used as a feedstock or held for sale as fuel at a wholesale facility are not excluded

Process

- “Process” includes the use, storage, manufacturing, handling, or on-site movement of regulated substances

RMP Exemption and Exclusion

- Source exemptions, quantity thresholds, and substance exclusions each has its limitations.

General Duty Clause (Clean Air Act Section 112(r)(1))

- The General Duty Clause (Clean Air Act Section 112(r)(1)) states operators of stationary sources producing, processing, handling or storing hazardous substances [i.e., a chemical in 40 CFR part 68 **or any other** extremely hazardous substance] have a general duty to identify hazards which may result from (such) releases, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases.

Definition:

Extremely Hazardous Substance

- The term "extremely hazardous substance" includes substances which may or may not be listed or otherwise identified by any Government agency which cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity (See: Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989) - "Senate Report")

Fuel Exclusion

- The GDC may be subject to the source exemption and substance (fuel) exclusion for paragraph 3 listed substances. The GDC is not subject to the threshold quantity determination, and the definition of extremely hazardous substance is substantially broader than substances listed in 40 CFR 68.130.

What is Potentially Subject to 112(r) – RMP or GDC?

- So what is potentially subject to 112(r), either RMP or more likely GDC?
 - Certain storage containers not incident to transportation
 - Substances used as feedstocks rather than ‘fuel’
 - Substances sold as fuel from wholesalers
 - Naturally occurring hydrocarbons after processing or refining
 - Any EHS outside the definition of ‘fuel’