

**CHAPTER 31
TOXIC CATASTROPHE PREVENTION
ACT PROGRAM**

Authority

N.J.S.A. 13:1B-3, 13:1K-19 et seq., 13:1D-9, and 26:2C-1 et seq.

Source and Effective Date

R.1998 d.355, effective June 18, 1998.
See: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Executive Order No. 66(1978) Expiration Date

Chapter 31, Toxic Catastrophe Prevention Act Program, expires on June 18, 2003.

Chapter Historical Note

Chapter 31, Toxic Catastrophe Prevention Act Program, except Subchapter 5, was adopted as R.1988 d.272, effective June 20, 1988 (operative July 21, 1988). See: 19 N.J.R. 1687(a), 20 N.J.R. 1356(a). Subchapter 5, Confidentiality and Trade Secrets, was adopted as R.1988 d.378, effective August 1, 1988. See: 20 N.J.R. 350(a), 20 N.J.R. 1913(b).

Pursuant to Executive Order No. 66(1978), Chapter 31, Toxic Catastrophe Prevention Act Program, was readopted as R.1993 d.358, effective June 18, 1993. See: 25 N.J.R. 1425(b), 25 N.J.R. 3156(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Toxic Catastrophe Prevention Act Program, was readopted as R.1998 d.355, effective June 18, 1998. A new Subchapter 2, Hazard Assessment, was adopted and former Subchapter 2, General Requirements, Prohibitions and Procedures, was repealed and recodified; a new Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was adopted and former Subchapter 3, Minimum Requirements for a Risk Management Program, was repealed and recodified; a new Subchapter 4, Minimum Requirements for a Program 3 TCPA Risk Management Program, was adopted, with N.J.A.C. 7:31-4.10 recodified from former N.J.A.C. 7:31-3.16, and former Subchapter 4, Work Plan Requirements, was repealed; a new Subchapter 5, Emergency Response, was adopted and former Subchapter 5, Confidentiality and Trade Secrets, was recodified as Subchapter 10; a new Subchapter 6, Extraordinarily Hazardous Substances, was adopted, with N.J.A.C. 7:31-6.3 recodified from former N.J.A.C. 7:31-2.3, and former Subchapter 6, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was recodified as Subchapter 11; Subchapter 7, Risk Management Plan and TCPA Program Submission, was adopted, with N.J.A.C. 7:31-7.4 recodified from former N.J.A.C. 7:31-2.8; Subchapter 8, Other Federal Requirements, was adopted, with N.J.A.C. 7:31-8.2 recodified from former N.J.A.C. 7:31-2.12; Subchapter 9, Work Plan/EHSARA, was adopted; and former Appendices I and II were repealed by R.1998 d.355, effective July 20, 1998. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:31-1.1 Incorporation by reference
- 7:31-1.2 Construction
- 7:31-1.3 Purpose
- 7:31-1.4 Incorporation by reference of the Code of Federal Regulations
- 7:31-1.5 State definitions
- 7:31-1.6 Severability
- 7:31-1.7 Practice where these rules do not govern
- 7:31-1.8 Document availability

- 7:31-1.9 Prohibitions
- 7:31-1.10 Prevention of catastrophic accidents
- 7:31-1.11 Fees (effective until June 21, 1999)
- 7:31-1.11A Fees (effective on June 21, 1999)
- 7:31-1.12 Release of information by insurance carriers

SUBCHAPTER 2. HAZARD ASSESSMENT

- 7:31-2.1 Incorporation by reference

SUBCHAPTER 3. MINIMUM REQUIREMENTS FOR A PROGRAM 2 TCPA RISK MANAGEMENT PROGRAM

- 7:31-3.1 Incorporation by reference
- 7:31-3.2 Emergency response
- 7:31-3.3 Triennial reports
- 7:31-3.4 New covered processes—construction and new EHS service

SUBCHAPTER 4. MINIMUM REQUIREMENTS FOR A PROGRAM 3 TCPA RISK MANAGEMENT PROGRAM

- 7:31-4.1 Incorporation by reference
- 7:31-4.2 Process hazard analysis with risk assessment for specific pieces of EHS equipment or operating alternatives
- 7:31-4.3 Standard operating procedures
- 7:31-4.4 EHS operator training
- 7:31-4.5 Mechanical integrity/preventive maintenance program
- 7:31-4.6 Management of change
- 7:31-4.7 Safety reviews: design and pre-startup
- 7:31-4.8 Emergency response
- 7:31-4.9 Annual reports
- 7:31-4.10 Obligations upon temporary discontinuance of EHS use, storage and handling
- 7:31-4.11 New covered processes—construction and new EHS service

SUBCHAPTER 5. EMERGENCY RESPONSE

- 7:31-5.1 Incorporation by reference
- 7:31-5.2 Emergency response program

SUBCHAPTER 6. EXTRAORDINARILY HAZARDOUS SUBSTANCES

- 7:31-6.1 Incorporation by reference
- 7:31-6.2 Threshold quantity determination
- 7:31-6.3 Extraordinarily hazardous substance list

SUBCHAPTER 7. RISK MANAGEMENT PLAN AND TCPA PROGRAM SUBMISSION

- 7:31-7.1 Incorporation by reference
- 7:31-7.2 TCPA risk management plan submission and updates
- 7:31-7.3 Risk management program and RMP—initial evaluation
- 7:31-7.4 Transfer of risk management program
- 7:31-7.5 Schedule for risk management program implementation

SUBCHAPTER 8. OTHER FEDERAL REQUIREMENTS

- 7:31-8.1 Incorporation by reference
- 7:31-8.2 Audits

SUBCHAPTER 9. WORK PLAN/EHSARA

- 7:31-9.1 Work plan preparation
- 7:31-9.2 Generic scope of work
- 7:31-9.3 Selection of consultants
- 7:31-9.4 Proposal requirements
- 7:31-9.5 EHSARA report

SUBCHAPTER 10. CONFIDENTIALITY AND TRADE SECRETS

- 7:31-10.1 Scope and applicability
- 7:31-10.2 General provisions
- 7:31-10.3 Exclusions from confidential information and privileged trade secret or security information
- 7:31-10.4 Confidentiality claims
- 7:31-10.5 Determination of confidentiality claims
- 7:31-10.6 Petitions to withhold privileged trade secret or security information
- 7:31-10.7 Determinations of petitions to withhold privileged trade secret or security information
- 7:31-10.8 Maintaining the confidentiality and security of confidential information
- 7:31-10.9 Disclosure of confidential information
- 7:31-10.10 Wrongful access or disclosure
- 7:31-10.11 Use of confidential information in rulemaking, reviewing extraordinarily hazardous substance accident risk assessment reports and risk management programs, and enforcement proceedings

SUBCHAPTER 11. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

- 7:31-11.1 Authority and purpose
- 7:31-11.2 Procedures for issuance of administrative orders and assessment of civil administrative penalties and payment of such penalties
- 7:31-11.3 Procedures to request an adjudicatory hearing
- 7:31-11.4 Civil administrative penalty determination

SUBCHAPTER 1. GENERAL PROVISIONS

7:31-1.1 Incorporation by reference

(a) This subchapter incorporates by reference 40 CFR 68 Subpart A, including all future amendments and supplements except as provided in (b) and (c) below.

(b) The following provisions of 40 CFR Part 68 Subpart A are not incorporated by reference: 40 CFR 68.2, Stayed provisions; 40 CFR 68.10(b), Applicability; and 40 CFR 68.12(b), General requirements.

(c) The following provisions of 40 CFR 68 Subpart A are incorporated by reference with the specified changes:

1. 40 CFR 68.1, Scope:

- i. In the first and second sentences, delete the word "part" and replace with "chapter."
- ii. Delete the phrase, "the petition process for adding or deleting substances to the list of regulated substances" and replace with the word "and".
- iii. Delete the phrase, "and the state accidental release prevention programs approved under section 112(r)."

iv. Delete the sentence, "The list of substances, threshold quantities and accident prevention regulations promulgated under this part do not limit in any way the general duty provisions under section 112(r)1."

2. 40 CFR 68.3, Definitions:

i. At the definition of "covered process," delete "a regulated substance present in more than a threshold quantity as determined under § 68.115" and replace with "an EHS inventory that meets or exceeds the threshold quantity as determined under N.J.A.C. 7:31-6.3."

ii. At the definition of "process," add "at a facility" after "Process means any activity" and before "involving a regulated substance."

iii. At the definition of "threshold quantity," delete, "quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part." and replace with, "minimum quantity of an EHS handled, used, manufactured, stored, or capable of being produced in one hour at a covered process that determines whether or not an owner or operator must register under the program."

iv. At the definition of "regulated substance," delete "any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130.", and replace with, "an EHS listed in Table I, Parts A, B, and C of N.J.A.C. 7:31-6.3."

3. 40 CFR 68.10, Applicability:

i. At 40 CFR 68.10(a), delete the phrase, "more than a threshold quantity" and replace with the phrase, "at least the threshold quantity", and delete the phrase, "as determined under 40 CFR 68.115" and replace with "as determined under N.J.A.C. 7:31-6" and at 40 CFR 68.10(a)(3) delete the phrase, "above a threshold quantity" and replace with "at a threshold quantity."

ii. At 40 CFR 68.10(a)1, delete the semicolon after "June 21, 1999" and add the following, "for covered processes with EHSs listed in N.J.A.C. 7:31-6.3 in Table 1, Part B or Part C. For covered processes with EHSs listed in N.J.A.C. 7:31-6.3 Table 1 Part A, the obligation to comply with this chapter begins on the operative date of these rules, June 18, 1998; however, the schedule for risk management program implementation shall be in accordance with N.J.A.C. 7:31-7.5."

iii. After 40 CFR 68.10(a)(1)-(3), add another item, "For new covered processes, in accordance with the requirements at N.J.A.C. 7:31-3.4 (for Program 2 covered processes) or N.J.A.C. 7:31-4.11 (for Program 3 covered processes)."