

CHAPTER 31

TOXIC CATASTROPHE PREVENTION ACT PROGRAM

Authority

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

Source and Effective Date

R.2003 d.335, effective July 14, 2003.
See: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 31, Toxic Catastrophe Prevention Act Program, was extended by gubernatorial directive from July 14, 2008 to August 13, 2008. See: 40 N.J.R. 4806(a).

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2, Hazard Assessment, was adopted and former Subchapter 2, General Requirements, Prohibitions and Procedures, was repealed and recodified; a new Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was adopted and former Subchapter 3, Minimum Requirements for a Risk Management Program, was repealed and recodified; a new Subchapter 4, Minimum Requirements for a Program 3 TCPA Risk Management Program, was adopted, with N.J.A.C. 7:31-4.10 recodified from former N.J.A.C. 7:31-3.16, and former Subchapter 4, Work Plan Requirements, was repealed; a new Subchapter 5, Emergency Response, was adopted and former Subchapter 5, Confidentiality and Trade Secrets, was recodified as Subchapter 10; a new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: 30 N.J.R. 908(a), 30 N.J.R. 2728(a).

Chapter 31, Toxic Catastrophe Prevention Act Program, was readopted as R.2003 d.335, effective July 14, 2003. See: Source and Effective Date. See, also, section annotations.

Petition for Rulemaking. See: 40 N.J.R. 1935(a), 2570(b).

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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, C, or D of N.J.A.C. 7:31-6.3(a) and (c)."

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 June 21, 1999 and add the following, "September 30, 2004, for covered purposes with EHSs listed in N.J.A.C. 7:31-6.3 in Table I, Part D. For covered processes with EHSs listed in N.J.A.C. 7:31-6.3 Table I Part A, B, or C, the obligation to comply with this chapter shall continue and the obligation to revise an owner or operator's risk management program shall be in accordance with the schedule set forth in 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)."