

CHAPTER 31

TOXIC CATASTROPHE PREVENTION ACT PROGRAM

Authority

N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq., 13:1D-125 et seq., 13:1K-19 et seq. and 26:2C-1 et seq.

Source and Effective Date

R.2009 d.85, effective February 9, 2009.
See: 40 N.J.R. 5109(a), 41 N.J.R. 1206(b).

Chapter Expiration Date

Chapter 31, Toxic Catastrophe Prevention Act Program, expires on February 9, 2014.

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2, Hazard Assessment, was adopted and former Subchapter 2, General Requirements, Prohibitions and Procedures, was repealed and recodified; a new Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was adopted and former Subchapter 3, Minimum Requirements for a Risk Management Program, was repealed and recodified; a new Subchapter 4, Minimum Requirements for a Program 3 TCPA Risk Management Program, was adopted, with N.J.A.C. 7:31-4.10 recodified from former N.J.A.C. 7:31-3.16, and former Subchapter 4, Work Plan Requirements, was repealed; a new Subchapter 5, Emergency Response, was adopted and former Subchapter 5, Confidentiality and Trade Secrets, was recodified as Subchapter 10; a new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from former N.J.A.C. 7:31-2.12; Subchapter 9, Work Plan/EHSARA, was adopted; and former Appendices I and II were repealed by R.1998 d.355, effective July 20, 1998.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: 35 N.J.R. 935(a), 35 N.J.R. 3618(b).

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

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 31, Toxic Catastrophe Prevention Act Program, was readopted as R.2009 d.85, effective February 9, 2009. As a part of R.2009 d.85, Subchapter 3, Minimum Requirements for a Program 2 TCPA Risk Management Program, was repealed, effective March 16,

2009 (operative March 16, 2010). See: Source and Effective Date. See, also, section annotations.

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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) and (e), Applicability; and 40 CFR 68.12(b) and (c), 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 present as determined under N.J.A.C. 7:31-6.3. A petroleum refining process unit having an EHS present is considered a single covered process."

ii. At the end of the definition of "petroleum refining process unit," add "Each petroleum refining process unit having an EHS present is a single covered process."

iii. Replace the definition of "threshold quantity" with "Threshold quantity means the quantity specified for EHSs pursuant to N.J.A.C. 7:31-6."

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)."

v. Replace the definition of "owner or operator" with "Owner or operator means any person who owns, leases, operates, controls, or supervises a facility (stationary source)."

3. 40 CFR 68.10, Applicability:

i. At 40 CFR 68.10(a), delete the introductory paragraph, and replace with, "An owner or operator of a facility (stationary source) that uses, manufactures, stores or has the capability of producing at least the threshold quantity of an EHS as determined under N.J.A.C. 7:31-6 shall comply with the requirements of this Chapter. Determination of whether a threshold quantity is present at the facility shall be made using the sum of the EHS inventory of all covered processes at the facility. The EHS inventory of a covered process shall be the greatest of the instantaneous static inventory of the EHS contained and stored, the hourly generation rate of the EHS, or the amount of the EHS that can be released in one hour from any EHS equipment within a covered process. The owner or operator shall comply no later than the latest of the following dates:". At 40 CFR 68.10(a)(3), delete the phrase, "above a threshold quantity in a process" and replace with "at or above a threshold quantity at the facility."