#### ORAL ARGUMENT NOT YET SCHEDULED

### Case No. 17-1155 (consolidated with Case No. 17-1181)

# United States Court of Appeals for the District of Columbia Circuit

AIR ALLIANCE HOUSTON, ET AL.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

Respondents.

PETITION FOR REVIEW OF FINAL ACTION BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

#### OPENING PROOF BRIEF FOR STATE PETITIONERS

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Dated: October 25, 2017

# CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel of record certifies as follows:

#### A. Parties

#### Petitioners

The following parties appear in these consolidated cases as petitioners:

In case no. 17-1155, filed June 15, 2017, Air Alliance Houston, California Communities Against Toxics, Clean Air Counsel, Coalition for a Safe Environment, Community In-Power & Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, Ohio Valley Environmental Coalition, Sierra Club, Texas Environmental Justice Advocacy Services, Union of Concerned Scientists, Utah Physicians for a Healthy Environment (together with aligned intervenors, "Community Petitioners").

In case no. 17-1181, filed July 24, 2017, the State of New York, State of Illinois, State of Iowa, State of Maine, State of Maryland, Commonwealth of Massachusetts, State of New Mexico, State of Oregon,

State of Rhode Island, State of Vermont, and State of Washington ("State Petitioners").

#### Respondents

The United States Environmental Protection Agency ("EPA") and E. Scott Pruitt, EPA Administrator, are respondents in these consolidated cases.

#### <u>Intervenors</u>

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC has intervened for petitioners in case no. 17-1155.

The following parties have intervened for respondents in case no. 17-1155: American Chemistry Council, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Chamber of Commerce of the United States of America, Chemical Safety Advocacy Group, Commonwealth of Kentucky, State of Arizona, State of Arkansas, State of Florida, State of Kansas, State of Louisiana, State of Oklahoma, State of South Carolina, State of Texas, State of Utah, State of West Virginia, and State of Wisconsin.

#### B. Ruling Under Review

State Petitioners seek review of the following final action by EPA:

A rule entitled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act: Further Delay of Effective Date," published at 82 Fed. Reg. 27,133 (June 14, 2017).

#### C. Related Cases

The rule at issue has not been previously reviewed in this or any other court. The challenged rule postpones the effective date of another EPA regulation, published at 82 Fed. Reg. 4,594 (Jan. 13, 2017), that is the subject of current litigation in this Court, *American Chemistry Council v. EPA*, D.C. Cir. No. 17-1085. That case is being held in abeyance pending agency reconsideration.

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#### **GLOSSARY**

Accident Prevention

Amendments

"Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air

Act," 82 Fed. Reg. 4,594 (Jan. 13, 2017)

Act Clean Air Act

Bureau of Alcohol, Tobacco, Firearms and

**Explosives** 

Community Air Alliance Houston, et al. and United

Petitioners Steelworkers, et al.

Delay Rule "Accidental Release Prevention Requirements:

Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date," 82 Fed. Reg.

27,133 (June 14, 2017)

Delay Rule Response to Comments on the 2017 Proposed Rule Further Delaying the Effective Date of

Comments EPA's Risk Management Program Amendments

(June 8, 2017)

EPA United States Environmental Protection Agency

Fact Sheet EPA Activities Under EO 13,650: Risk

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State Petitioners New York, Illinois, Iowa, Maine, Maryland,

Massachusetts, New Mexico, Oregon, Rhode

Island, Vermont, and Washington

#### PRELIMINARY STATEMENT

At issue in this proceeding is the Environmental Protection Agency's authority to delay by nearly two years a critically important regulation under the Clean Air Act that was the product of a multiyear effort to prevent deaths and injuries from chemical accidents, such as the one that injured numerous first responders in Houston following Hurricane Harvey. EPA has justified the delay by asserting that it intends to reconsider the regulation, but it has never repudiated the policies or factual findings underlying the regulation. To the contrary, EPA has continued to endorse its earlier conclusion that enhanced safeguards are needed to prevent or mitigate the catastrophic harms caused by chemical accidents.

This Court should invalidate EPA's unlawful postponement of its chemical-accident regulation, for either of two independent reasons. First, EPA lacked the statutory authority to delay the rule pending reconsideration. The Clean Air Act expressly forbids reconsideration from delaying the effective date of a final rule, except for a single three-month period that EPA has already exhausted here. And EPA's delay further violates a separate provision of the Clean Air Act requiring that

regulations on chemical accidents in particular assure compliance by regulated entities as expeditiously as practicable—a mandate that EPA's nearly two-year delay unlawfully disregards.

Second, EPA's delay is arbitrary and capricious. Under black-letter law, an agency may not simply disregard its prior policies and factual findings without a detailed, reasoned justification. Yet EPA failed to offer any such justification here for effectively rescinding the benefits of its chemical-accident regulation for nearly two years. With the delay in place, regulated entities neither have to upgrade safety protections nor take steps to meet later compliance deadlines, which means that the delay affects the timing of *all* of the rule's benefits. As recent accidents continue to demonstrate, at great cost both to people and to the States, there remains a pressing need to reform the processes for identifying, preventing, and responding to chemical accidents. EPA improperly disregarded these important interests here.

Because EPA's delay of its chemical-accident rule is unlawful, this Court should vacate the delay so that the underlying rule—and its benefits to workers, first responders, and communities—may be implemented forthwith.

#### JURISDICTIONAL STATEMENT

The Court has exclusive jurisdiction under section 307(b) of the Clean Air Act (the "Act") to review any challenge to the Administrator's promulgation of a rule under section 112 of the Act. 42 U.S.C. § 7607(b). New York, Illinois, Iowa, Maine, Maryland, Massachusetts, New Mexico, Oregon, Rhode Island, Vermont, and Washington ("State Petitioners") challenge EPA's rule, "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date," 82 Fed. Reg. 27,133 (June 14, 2017) ("Delay Rule"). The Delay Rule postpones by twenty months the effective date of EPA's final rule, "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act," 82 Fed. Reg. 4,594 (Jan. 13, 2017) ("Accident Prevention Amendments"), which updated safety requirements for large industrial facilities that handle hazardous chemicals. State Petitioners filed a petition for review of the Delay Rule within the sixty-day period provided in 42 U.S.C. § 7607(b).

<sup>&</sup>lt;sup>1</sup> This same rule has been referred to in the rulemaking and in this litigation as the "Chemical Disaster Rule." *See generally* Brief of Community Petitioners.

#### ISSUES PRESENTED

- 1. Whether EPA lacked authority to promulgate the Delay Rule (a) under section 307(d), 42 U.S.C. § 7607(d), which confines the Administrator's power to stay the effectiveness of a rule pending reconsideration to a single three-month period; and (b) under section 112(r)(7), 42 U.S.C. § 7412(r)(7), which provides that "[r]egulations promulgated pursuant to this subparagraph shall have an effective date . . . assuring compliance as expeditiously as practicable."
- 2. Whether EPA acted arbitrarily, capriciously, and contrary to law in promulgating the Delay Rule when it has offered no reasoned basis to effectively rescind the Accident Prevention Amendments for twenty months despite the agency's unchanged factual findings that the Amendments rule is necessary to protect public health and safety.

#### STATUTES AND REGULATIONS

The relevant statutory and regulatory provisions and legislative history excerpts are contained in the Addendum at the end of this brief.

#### STATEMENT OF THE CASE

#### A. EPA's Risk Management Program

In 1990, Congress amended the Clean Air Act to add section 112(r), 42 U.S.C. § 7412(r), in response to several catastrophic chemical accidents, including the release of toxic gas from a pesticide plant in Bhopal, India, in 1984 that killed thousands of people. The new section, "Prevention of Accidental Releases," directed EPA to list substances that could cause serious harm to human health or the environment if accidentally released. *Id.* § 7412(r)(3). For each listed substance, EPA was required to establish a threshold quantity at which an accidental release would cause injury or death. *Id.* § 7412(r)(5). In 1994, EPA published the list of regulated substances and the types of facilities subject to regulation under section 112(r). 59 Fed. Reg. 4,478 (Jan. 31, 1994).

Congress further directed EPA to "promulgate reasonable regulations . . . to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances." 42 U.S.C. § 7412(r)(7)(B)(i). Such regulations must require facilities with listed substances present in excess of the threshold quantities to prepare

and implement risk management plans to prevent accidental releases. Id. § 7412(r)(7)(B)(ii). In 1996, EPA published these Risk Management Program regulations. 61 Fed. Reg. 31,668 (June 20, 1996), codified at 40 C.F.R. Part 68.

The Risk Management Program regulations cover industrial processes that involve the use, storage, manufacturing, or handling of listed substances. 40 C.F.R. 68.3. Facilities are divided by their industrial processes into three tiers: Programs 1, 2, and 3. *Id.* § 68.10. EPA assigns a tier based on the potential for offsite consequences associated with a worst-case accidental release, as well as on the facility's accident history and whether it is subject to Occupational Safety and Health Administration safety requirements. *Id.* Under this scaled approach, facilities subject to Program 1 have the least stringent requirements, while those covered by Program 3 have the most stringent.

Each regulated facility must submit to EPA a certified risk management plan that includes its accidental release prevention and emergency response policies, regulated substances handled, five-year accident history, emergency response program, planned changes to improve safety, worst-case release scenarios, and registration form. See

40 C.F.R. 68, subpart G. Facilities subject to Programs 2 and 3 must also include a hazard review or process hazard analysis, respectively, addressing the risks associated with those processes and the safeguards in place to control such hazards. *See id.* §§ 68.50, 68.67, 68.170, 68.175. Approximately 12,500 facilities have current risk management plans filed with EPA. 81 Fed. Reg. 13,638, 13,641 (Mar. 14, 2016).

#### B. 2012 Administrative Petition and Executive Order 13,650

Despite the enhanced safety provided by the Risk Management Program regulations, chemical releases and disasters at facilities in the United States continued to pose a significant risk to workers and communities. For instance, in 2005, explosions at a British Petroleum refinery in Texas killed fifteen people and injured more than 170 individuals. 81 Fed. Reg. at 13,644. In 2010, an explosion and fire at the Tesoro Refinery in Washington killed seven people. *Id.* In 2012, a fire at the Chevron Refinery in California created a large plume of hazardous chemicals, forcing nearly 15,000 residents to seek medical treatment. *Id.* In April 2013, a fire and explosion at the West Fertilizer Facility in Texas killed fifteen people. *Id.* at 13,640.

To prevent similar disasters, over fifty organizations and individuals petitioned EPA in July 2012 to strengthen the existing regulations. See EPA-HQ-OEM-2015-0725-0249 (JA\_\_\_\_). Petitioners urged EPA to improve existing safeguards by, among other things, requiring safer technologies where feasible to reduce the need to use and store dangerous quantities of hazardous substances at facilities. Id. (JA\_\_\_\_).

In August 2013, President Obama issued an executive order directing federal agencies to improve safety and security at chemical facilities. Exec. Order No. 13,650 (Aug. 1, 2013) (JA\_\_\_\_\_). The Executive Order instructed federal agencies to ensure that state and local partners have access to key information to prevent, prepare for, and respond to chemical incidents. *Id.* (JA\_\_\_\_\_). The Order also directed federal agencies, including EPA, to improve chemical safety regulations and determine if additional chemicals should be covered by federal regulatory programs. *Id.* (JA\_\_\_\_\_).

# C. The Proposed Accident Prevention Amendments

After gathering information from the public regarding potential changes to the existing Risk Management Program regulations, EPA

published proposed amendments in March 2016. 81 Fed. Reg. 13,638. EPA found that although existing regulations had been effective in preventing and mitigating chemical accidents, "revisions could further protect human health and the environment from chemical hazards through advancement of process safety management based on lessons learned." *Id.* at 13,640.

By reviewing past chemical accidents and investigation reports from the Chemical Safety Board and other entities, EPA identified four areas of poor performance that contributed to the severity of chemical accidents: (1) inadequate accident investigations; (2) flawed compliance audits; (3) insufficient coordination between chemical facilities and local emergency responders; and (4) lack of communication between facility personnel and first responders, and facility personnel and communities. 81 Fed. Reg. at 13,649, 13,654, 13,671, 13,678.

To strengthen accident prevention programs and auditing requirements, EPA proposed that Program 2 and 3 facilities conduct "root cause" analyses to determine the fundamental, system-related reasons for incidents that resulted in catastrophic releases (or near misses). *Id.* at 13,648. It also proposed that those facilities arrange for independent

third-party compliance audits after an accident or finding of significant non-compliance. *Id.* at 13,654. Auditors would determine if facilities were complying with the Risk Management Program regulations, and whether facilities' procedures and practices were adequate and being followed. Certain Program 3 facilities also would be required to analyze potential safer technology and alternatives and their feasibility. *Id.* at 13,667.

To improve emergency-response preparedness, EPA further proposed requiring that certain facilities coordinate annually with local response authorities to ensure that appropriate resources and capabilities are in place to respond to accidental releases, conduct emergency notification exercises annually, and regularly perform emergency field and tabletop exercises. 81 Fed. Reg. at 13,671-77.

Finally, to improve community awareness of potential risks, EPA proposed that each subject facility: provide certain basic information to the public; hold a public meeting after a reportable incident; and annually prepare a report containing a facility's chemical hazard information that would be provided to local officials upon request. Such reports would contain information on a facility's regulated substances, accident history, compliance audit reports, incident investigation reports,

inherently safer technology employed, and emergency exercises. 81 Fed. Reg. at 13,677-82.

Some commenters raised security concerns with the proposed requirements that owners and operators provide detailed chemical hazard information to local emergency response officials and share chemical hazard information with the public by posting that information on company websites. Response to Comments (Dec. 19, 2016) at 194 (JA\_\_\_).

Other commenters discussed the announcement of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("Bureau") near the end of the comment period that the 2013 fire and explosion at the West Fertilizer facility in Texas, was caused by arson, rather than by the issues addressed in the proposed rule. The commenters contended that a mistaken view of the cause of the incident was the basis for the Executive Order and asked EPA to reevaluate the need for the proposed amendments in light of the Bureau's finding. Response to Comments at 247 (JA\_\_\_).

#### D. Final Accident Prevention Amendments

EPA published the Accident Prevention Amendments in January 2017. 82 Fed. Reg. 4,594. EPA retained the major changes proposed to the existing regulations, and made some modifications in response to comments.

With respect to security concerns regarding the proposed information-sharing provisions, EPA eliminated the requirement that owners and operators prepare an annual summary of chemical hazard information for submission to local officials. 82 Fed. Reg. at 4,666. Instead, the final rule requires that, in addition to providing its emergency response plan, the facility provide "any other information that local emergency planning and response organizations identify as relevant to local emergency response planning." *Id.* at 4,701 (40 C.F.R. § 68.93(b)). This approach, EPA explained, allows facility owners and emergency response officials "to identify information that may need to be maintained securely and discuss strategies to secure the information or to provide only information that is pertinent to emergency response planning without revealing security vulnerabilities." Id. at 4,667. EPA also eliminated the requirement that facilities post chemical hazard

information on the internet. *Id*. The rule instead obligates facilities to make such information available upon request. *Id*.

EPA disagreed, however, with comments that the Bureau's finding that arson was the cause of the West Fertilizer incident required rethinking the proposed amendments. Because the Executive Order was also triggered by numerous other chemical facility incidents, including several that were indisputably caused by the issues addressed in the proposed rule, EPA concluded that "it would be inappropriate to suspend the rulemaking based on the outcomes of the incident investigation of the West Fertilizer explosion." Response to Comments at 248 (JA....). Moreover, EPA found that, regardless of the cause of the incident, the problems that arose during the response to that incident still demonstrated "the importance of emergency responders being aware of the risks presented by chemicals on-site as well as the need to have drilled for response." *Id.* (JA\_\_\_\_).

EPA anticipated that implementation of the Accident Prevention Amendments "will result in a reduction of the frequency and magnitude of damages from releases." 82 Fed. Reg. at 4,683. It conservatively estimated the costs of chemical accidents at \$274.7 million annually, a

figure that did not reflect emergency response costs, property value impacts in surrounding communities, and environmental impacts. *Id.* at 4,684. EPA expected that "some portion of future damages would be prevented through implementation of this rule." *Id.* at 4,683. Moreover, it found that "[r]educing the probability of chemical accidents and the severity of their impacts, and improving information disclosure by chemical facilities, as the provisions intend, would provide benefits to potentially affected members of society." *Id.* at 4,684.

EPA determined that March 14, 2017, was an appropriate effective date for the rule: it was practicable for regulated entities to comply with some provisions immediately, while they would need additional time to prepare to comply with others. 82 Fed. Reg. at 4,675-76. For the latter category, compliance was phased in from March 14, 2018, to March 14, 2022. *Id.* at 4,696 (40 C.F.R. 68.10(b)-(e)). In setting dates for the different requirements, EPA explained that it had considered the time needed for facility operators to understand the new rules, train personnel, arrange responses, research technologies, and provide for public notification. *Id.* at 4,676.

#### E. The Proposed Delay Rule

In March 2017, EPA issued a three-month administrative stay of the effective date of the Accident Prevention Amendments, pending reconsideration, until June 2017. 82 Fed. Reg. 13,968 (Mar. 16, 2017). The stay was in response to three petitions filed with the agency, including one by a coalition of industry groups called the RMP Coalition. EPA-HQ-OEM-2015-0725-0759 (JA\_\_\_\_). The Coalition argued EPA should reconsider the entire rule based on the finding of the cause of the West Fertilizer incident alone. Id. at 15-16 (JA\_\_\_\_-.\_\_\_). Administrator Pruitt found that the petition met the requirements for reconsideration under section 307(d)(7)(B) of the Act. EPA-HQ-OEM-2015-0725-0763. (JA\_\_\_\_). He stated that the timing of the finding on the West Fertilizer incident "made it impracticable for many commenters to meaningfully address the significance of this finding in their comments," id. at 2 (JA )—even though it is undisputed that multiple commenters did address the finding, and that EPA responded to those comments. Administrator Pruitt also asserted that "the prominence of the incident in the policy decisions underlying the rule makes the [Bureau's] finding

regarding the cause of the incident of central relevance to the [Accident Prevention Amendments]." *Id.* (JA\_\_\_\_).<sup>2</sup>

In April 2017, EPA issued a proposed rule to further delay the effective date of the Accident Prevention Amendments to February 19, 2019. 82 Fed. Reg. 16,146 (Apr. 3, 2017). EPA stated that "[t]his timeframe would allow the EPA time to evaluate the objections raised by the various petitions for reconsideration of the [Accident Prevention Amendments], consider other issues that may benefit from additional comment, and take further regulatory action." *Id.* at 16,148-49.

#### F. The Final Delay Rule

On June 14, 2017, EPA published the Delay Rule, which postpones the effective date of the Accident Prevention Amendments for twenty months, until February 2019. 82 Fed. Reg. 27,133 (June 14, 2017). EPA cited sections 307(d) and 112(r)(7) of the Act as authority for the Delay Rule. *Id.* at 27,135.

<sup>&</sup>lt;sup>2</sup> EPA received two additional petitions for reconsideration of the Accident Prevention Amendments on March 13 and 14. EPA-HQ-OEM-2015-0725-0766, EPA-HQ-OEM-2015-0725-0762 (JA\_\_\_\_, JA\_\_\_\_).

EPA found the delay to be "reasonable and practicable" because it did not want to make the regulated community comply with requirements that might be changed following reconsideration. 82 Fed. Reg. at 27,139. It selected a twenty-month delay because it expected its reconsideration to take that long to complete. *Id.* at 27,136. EPA further announced that "[c]ompliance with all of the rule provisions is not required as long as the rule does not become effective." *Id.* at 27,142.

The Delay Rule had an immediate effect on the regulated community and the public because some of the Accident Prevention Amendments were triggered upon the Rule's effective date. See 82 Fed. Reg. at 4,696 (40 C.F.R. 68.10(a)(4)). Other requirements pertaining to emergency response coordination were designed to come into effect within the twenty-month delay period, and so were also necessarily put off by the Delay Rule. See id. (40 C.F.R. 68.10(b)).

### G. This Proceeding

Community Petitioners and State Petitioners filed petitions challenging the Delay Rule, which this Court consolidated. Community Petitioners moved for a stay and expedited consideration of the Delay Rule or, in the alternative, for summary vacatur. See Doc. No. 1680887

(filed June 22, 2017). State Petitioners joined that motion. See Doc. No. 1686931 (filed Aug. 2, 2017). On August 30, the Court denied the motion to stay or summarily vacate, but granted expedition. Doc. No. 1690788.

#### STANDARD OF REVIEW

An EPA action may be reversed if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; . . . [or] in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 42 U.S.C. §§ 7607(d)(9)(A) & (C).

This challenge involves EPA's construction of the Act. Where the statute speaks directly to the question at issue, a court "must give effect to the unambiguously expressed intent of Congress." *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-43 (1984). Where the statute does "not directly address[] the precise question at issue, . . . the question for the court is whether the agency's answer is based on a permissible construction of the statute," and the court will reverse the agency's determination if it is "arbitrary, capricious, or manifestly contrary to the statute." *Id.* at 843-44.

This case also involves a change in policy by EPA. In changing course, an agency must display "awareness that it *is* changing position"

and provide a reasoned basis for its conclusion "that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis original). If a "new policy rests upon factual findings that contradict those which underlay [an agency's] prior policy," the agency must "provide a more detailed justification" for its action. *Id.* 

#### SUMMARY OF ARGUMENT

I. EPA lacked the statutory authority to promulgate the Delay Rule. The express purpose of the Delay Rule is to give EPA additional time to reconsider the Accident Prevention Amendments. But section 307(d) limits EPA's authority to delay a rule on that ground: EPA may postpone the effective date of a rule only once during reconsideration, and only for three months. Here, EPA already exercised its limited power under section 307(d) when it delayed the Accident Prevention Amendments for three months pending reconsideration. Its attempt to use reconsideration as a tool for further delay is barred by section 307(d)'s plain terms, as confirmed by that provision's legislative history and this Court's precedent.

The Delay Rule also violates section 112(r)(7), which requires that EPA set "an effective date . . . assuring compliance as expeditiously as practicable." 42 U.S.C. § 7412(r)(7)(A). EPA satisfied this statutory mandate when it promulgated the Accident Prevention Amendments and set both the effective date and subsequent compliance dates based on its careful consideration of the amount of time that facilities would need to comply with each new requirement. Section 112(r)(7) forbids EPA from suspending this schedule for the purpose of excusing, rather than assuring, the industry's compliance with promulgated safety rules. And the statute further forbids EPA from relying on burdens it faces while reconsidering a rule to justify delaying the rule's effective date, since alleviating the agency of such burdens has nothing to do with assuring industry compliance with safety standards as expeditiously practicable.

II. Even if this Court were to determine that EPA had statutory authority to postpone the Accident Prevention Amendments' effective date, it should nonetheless invalidate the Delay Rule as arbitrary and capricious. In promulgating the underlying rule, EPA found that its enhanced safeguards are necessary to protect public health and safety,

and that its effective date and subsequent compliance dates assure industry compliance with these safeguards as expeditiously as practicable. The Delay Rule effectively rescinds these critical protections for twenty months but provides no adequate justification for doing so. Indeed, EPA made no attempt to justify the Delay Rule on public health and safety grounds, and has failed to discuss—let alone dispute—the findings and policies underlying the Amendments. And the grounds that EPA has invoked for the Delay Rule—including its asserted need to assess the implications of the arson finding regarding the West Fertilizer fire—fail to provide a reasoned basis for the Delay Rule.

#### **STANDING**

State Petitioners have Article III standing to challenge the Delay Rule. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). The Delay Rule causes two distinct injuries to State Petitioners: it injures their quasi-sovereign interests in protecting the health and safety of their residents from chemical accidents; and it injures the States' proprietary interests, including increased costs to respond to and investigate accidents, and harm to state-owned natural resources that timely

implementation of Accident Prevention Amendments would likely avoid or mitigate.

#### A. Injury to Quasi-Sovereign Interests

EPA's decision to delay effectiveness of the Accident Prevention Amendments for nearly two years will result in concrete harms to the health and safety of our residents who work in the subject facilities and who live in nearby communities. There are hundreds of industrial facilities in our States subject to the Amendments' increased safety requirements. See EPA-HQ-OEM-2015-0725-0311 (EPA database listing subject facilities) (JA ). Approximately 150 chemical accidents in which facility owners reported health harms or property damage occurred annually in the ten-year period of 2004-13. See EPA Technical Background Document (Jan. 27, 2016), EPA-HQ-OEM-2015-0725-0039, at 2-3 (JA - ). Accidents over that period resulted in 58 deaths, over 17,000 injuries, almost 500,000 people evacuated or sheltered in place, and over \$2 billion in property damages. EPA Activities Under EO 13,650: Risk Management Program Final Rule Questions & Answers (June 2017) ("Fact Sheet") available at 1, at: https://www.epa.gov/sites/production/files/2017-

06/documents/rmp\_final\_rule\_qs\_and\_as\_6-12-17\_0.pdf (JA\_\_\_\_); see also attached Declaration of Agata McIntyre, Northwest Clean Air Agency, ¶¶ 6-13 (explaining risks to human health from pollution emitted during chemical accidents).

The Accident Prevention Amendments were designed to decrease the number and severity of chemical accidents, lessening these harms. See 82 Fed. Reg. at 4,597; see also Fact Sheet at 1 ("EPA's changes to the RMP rule will help protect local first responders, community members and employees from death or injury due to chemical facility accidents") (JA\_\_\_).

The Delay Rule postpones implementation of these measures and will thus increase the number and severity of chemical accidents. Based on EPA's findings discussed above, approximately 250 accidents causing harm or damage would be expected to occur during the twenty months the Delay Rule is in effect. Indeed, several notable accidents have already occurred while the Delay Rule has been in place, such as the explosion at the Arkema chemical facility near Houston and an accident at a coal-fired power plant in Pennsylvania in August in which two workers died and

four others were injured.<sup>3</sup> The delay in implementing the Accident Prevention Amendments will thus likely harm the health and safety of State Petitioners' residents, who live near and work at subject facilities, and damage natural resources nearby.

State Petitioners have standing to assert their quasi-sovereign interests in protecting their residents and their environments from such harms. See, e.g., Massachusetts v. EPA, 549 U.S. 497, 519-21 (2007); Hanford Challenge v. Moniz, 218 F. Supp.3d 1171, 1182 (E.D. Wash. 2016). The doctrine that States may lack parens patriae standing to sue the federal government, see Massachusetts v. Mellon, 262 U.S. 447 (1923), is inapplicable here for two reasons. First, Mellon's limit on parens patriae actions is only a prudential limitation on Article III standing that can be—and has been here—overridden by Congress. The Act expressly confers a procedural right on States (and other parties) to challenge EPA regulatory action under section 307(b)(1). See Massachusetts v. EPA, 549

<sup>&</sup>lt;sup>3</sup> See https://www.washingtonpost.com/news/post-nation/wp/2017/08/30/texas-town-under-emergency-evacuation-as-flooded-chemical-plant-nears-explosion/?utm\_term=.466bbed55546 (Arkema chemical accident);

https://www.eenews.net/greenwire/2017/08/31/stories/1060059479 (Bruce Mansfield power plant accident).

U.S. at 520 (citing concomitant procedural right to challenge denial of rulemaking petition under section 307(b)(1)); Md. People's Counsel v. FERC, 760 F.2d 318, 322 (D.C. Cir. 1985) ("where the subject of challenge is Executive compliance with statutory requirements in a field where the have federal and states shared government long regulatory responsibility, we have no doubt that congressional elimination of the rule of Massachusetts v. Mellon is effective"). Second, State Petitioners are asserting rights conferred on them by federal law—here, the Act's guarantee of adequate safeguards to protect their communities and workers from harm caused by chemical accidents. See Massachusetts v. EPA, 549 U.S. at 520 n.17 (State has quasi-sovereign standing "to assert its rights under federal law," including the Act).

## B. Proprietary Injury

The Delay Rule also will likely cause State Petitioners to incur direct injury to proprietary interests. State Petitioners will bear increased costs to respond to and investigate chemical accidents that likely would have been prevented or mitigated had the Accident Prevention Amendments gone into effect as scheduled. For example, Washington conservatively spent \$370,000 in non-recoverable funds

responding to and investigating the Tesoro Refinery explosion, an accident cited by EPA as demonstrating the need to strengthen the existing regulations. See Declaration of Christian Bannick, Washington Department of Labor & Industries, ¶¶ 10-12 (describing staff time and expense from Tesoro Refinery investigation as a "unanticipated and heavy blow to the Department's budget"). As discussed above, postponement of the Accident Prevention Amendments means that the rate and severity of chemical accidents will likely continue, rather than decline. As with prior accidents, including those in Washington, State Petitioners will incur costs responding to and investigating these accidents. Compelling facilities to adopt these safeguards without further delay will therefore likely lessen the direct financial burdens on State Petitioners. Chemical accidents also cause injury to state resources, including impacts to airsheds and air quality. McIntyre Decl. ¶¶ 10-12. These injuries provide additional, independent grounds for standing. See West Virginia v. EPA, 362 F.3d 861, 868 (D.C. Cir. 2004) (EPA action that makes it more onerous for State to address pollution causes cognizable injury for State to assert Article III standing).

### **ARGUMENT**

### **POINT I**

## EPA LACKED STATUTORY AUTHORITY TO ISSUE THE DELAY RULE

In the Delay Rule, EPA cited two provisions of the Act as providing it authority to postpone the effective date of the Accident Prevention Amendments pending reconsideration: section 307(d) and section 112(r)(7). 82 Fed. Reg. at 27,135. EPA asserted that it has general authority under section 307(d) to set effective dates of its choosing, and that its Delay Rule was also authorized by language in section 112(r)(7) granting the Administrator discretion to set effective dates. Neither section authorizes the Delay Rule. To the contrary, the plain terms of both provisions prohibit EPA from postponing the effective date of a final rule promulgated under section 112(r)—and thereby excusing industry compliance—simply because EPA wishes to reconsider the underlying rule.

- A. Section 307(d) Authorizes Only a Single Three-Month Delay During Reconsideration, Which EPA Already Exhausted Here.
  - 1. The statute expressly prohibits delays for purposes of reconsideration outside of a single three-month period.

EPA's twenty-month postponement of the effective date of the Accident Prevention Amendments violates the plain language of section 307(d), 42 U.S.C. § 7607(d). Once a rule is promulgated, section 307(d) expressly provides that the rule remains effective even if it is being challenged in court, and the "filing of a petition for reconsideration . . . shall not affect the finality" of a rule and "shall not postpone the effectiveness of such rule." 42 U.S.C. § 7607(b)(1) (emphasis added). Similarly, if EPA convenes a proceeding for reconsideration based on late-arising objections that are central to a rule's relevance, section 307(d) again reiterates that "[s]uch reconsideration shall not postpone the effectiveness of the rule." Id. § 7607(d)(7)(B). Although Congress provided a narrow exception to this principle in section 307(d)(7)(B), which allows a stay of final rules pending reconsideration, that exception is expressly limited "for a period not to exceed three months." Id. (emphasis added).

The Delay Rule's twenty-month postponement of the effective date of the Accident Prevention Amendments for purposes of reconsideration violates this clear statutory language. EPA concedes that the purpose of the Delay Rule is to "allow the EPA time to evaluate the objections raised by the various petitions for reconsideration of the Amendments, consider other issues that may benefit from additional comment, and take further regulatory action." 82 Fed. Reg. at 27,140. But EPA already delayed the Amendments for three months for reconsideration, see id. at 27,135, and section 307(d)(7)(B) prohibits any further delay on that ground.

The limitation on EPA's authority to stay a promulgated Clean Air Act rule—only for three months and only when certain reconsideration factors are met—aligns with the statute's primary purpose of protecting public health and welfare by ensuring that promulgated rules take effect and remain effective even if the agency revisits its reasoning. See id. § 7401(b)(1). Indeed, Congress amended 307(b)(1) in 1990 specifically "to assure that the pendency of a petition for reconsideration does not delay [judicial] review or limit the effectiveness or enforceability of EPA's action pending reconsideration or judicial review." Senate Rep. No. 101-228 (101st Cong., 1st Sess.) at 372 (emphasis added) (ADD-116); see 104 Stat.

2399, 2682 (1990). Congress further emphasized that reconsideration does not postpone the finality or effectiveness of a rule: "[T]his amendment reaffirms what both the language and legislative history of section 307(b) demonstrate, that is, that Congress intended EPA rulemaking action to be final upon final promulgation, not upon a decision on reconsideration." *Id.* at 372 (ADD-116).

Here, the Delay Rule frustrates Congress's intent that, beyond a three-month period, reconsideration not postpone a rule's effectiveness. EPA's use of reconsideration of the Accident Prevention Amendments as effectively a placeholder stay—so that it can decide whether to change anything—violates the statute's plain terms and undermines Congress's desire to ensure that reconsideration does not undercut "efficient implementation of the Act's regulatory program." *Id.* at 372 (ADD-116).

# 2. EPA has no general authority to revise the effective date of a final rule during reconsideration.

EPA's attempt to cite its general rulemaking authority to circumvent the plain language of the statute is foreclosed by this Court's precedent. The agency cannot use a general grant of authority in the Act to avoid more specific limits on its power in the statute. See Clean Air Council v. Pruitt, 862 F.3d 1, 9 (D.C. Cir. 2017) (rejecting EPA argument

that it possesses authority under section 307 to stay rules under reconsideration beyond the express authority contained in section 307(d)(7)(B)); *NRDC v. Reilly*, 976 F.2d 36, 40-41 (D.C. Cir. 1992) (invalidating stay of emission standards under section 112 where agency relied in part on general rulemaking authority).

In this case, EPA seeks to avoid the three-month limitation in section 307(d)(7)(B) by asserting it has authority under section 307(d) "to set effective dates unless other provisions of the [Act] control," 82 Fed. Reg. at 27,135, and to "revis[e]" existing rules, id. at 27,136. Under the agency's theory, there is no time limit on delaying rules under reconsideration provided it follows notice-and-comment procedures. See id. at 27,135. But EPA's general rulemaking authority does not allow the agency to disregard the specific limitations that Congress placed on delaying the effective date of a final rule pending reconsideration. Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general.").

EPA's reliance on section 307(d) to issue the Delay Rule is no different from the agency's unsuccessful attempts to rely on its general

rulemaking authority in *Clean Air Council* and in *Reilly* to suspend final rules. In *Clean Air Council*, EPA contended it had broad authority under section 307(d) to reconsider rules—and, correspondingly, to stay them during the reconsideration process. EPA cited section 307(d)'s "revision" language as evidence that Congress intended EPA to have discretion to issue stays for reconsiderations beyond the circumstances described in section 307(d)(7)(B). *See* EPA Opp. in *Clean Air Council v. Pruitt*, Case No. 17-1145, Doc. No. 1679831 (filed June 15, 2017) at 12. This Court disagreed, finding that section 307(d)(7)(B) plainly limited EPA's authority to stay rules to situations where EPA could demonstrate that the provision's reconsideration criteria were satisfied. *Clean Air Council*, 862 F.3d at 9.

Similarly, in *Reilly*, the Court struck down an attempt by EPA to delay emission standards it had promulgated under section 112 beyond the three-month reconsideration period provided for in section 307(d)(7)(B). EPA justified the delay rule in that case, which it had issued after notice and comment, on the need to avoid compliance costs for industry while the agency decided whether to change the underlying rule. 976 F.2d at 39. EPA in *Reilly* relied in part on its general rulemaking

authority under section 301 of the Act, which states that the Administrator may issue rules as necessary to carry out his functions under the Act. *Id.* at 40. The Court rejected EPA's argument, finding that the Administrator's authority under section 301 to stay promulgated standards was limited by the three-month limit prescribed in section 307(d)(7)(B), and that nothing in section 112 authorized that delay rule. *Id.* at 41.

EPA's attempt here to invoke its general rulemaking authority for the Delay Rule is thus unavailing. See Clean Air Council, 862 F.3d at 9; Reilly, 976 F.2d at 40; see generally Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 485 (2001) (EPA "may not construe [a] statute in a way that completely nullifies textually applicable provisions meant to limits its discretion").

<sup>&</sup>lt;sup>4</sup> EPA contends *Reilly* is inapposite because, unlike in that case, the Accident Prevention Amendments "were not promulgated to comply with a court order enforcing a mandatory duty." 82 Fed. Reg. at 27,137. But that argument is beside the point. The question in this case is not whether EPA must regulate as a threshold matter—it already decided to do so in promulgating the Amendments. Rather, the question is whether EPA has authority under sections 307(d) or 112(r)(7) to postpone the effective date of that rule. As explained above, and below, *see* Point I.B, *infra*, it does not.

### B. Section 112(r)(7) Prohibits the Delay Rule

The Delay Rule also separately violates section 112(r)(7), which authorizes EPA to set an effective date solely for purposes of "assuring compliance as expeditiously as practicable" with a rule's standards "for the prevention and detection of accidental releases of regulated substances and for response to such releases." 42 U.S.C. § 7412(r)(7)(A), (B) (emphasis added). The statutory language reflects Congress's intent that EPA ensure adequate safeguards are promptly put in place to protect workers and surrounding communities from releases of dangerous chemicals from accidents.

The Delay Rule violates this statutory mandate by excusing rather than assuring industry compliance with the Accident Prevention Amendments for nearly two years, and by doing so based on the agency's timeline for completing reconsideration rather than regulated entities' ability to implement new safeguards. A rule "assur[es] compliance as expeditiously as practicable" when it directs regulated entities to comply with the rule as soon as those entities are able to "put into practice" their obligations. See Ashton v. Pierce, 541 F. Supp. 635, 641 (D.D.C. 1982) (defining "practicable"). The legislative history of section 112(r)(7)

confirms that Congress intended EPA to set effective dates based on the time necessary for facilities to implement required measures.<sup>5</sup>

In the Accident Prevention Amendments, EPA adhered to Congress' intent by establishing deadlines that assured industry compliance based on what was practicable for facilities to achieve. EPA set a March 14, 2017, effective date (sixty days after the rule was published), when initial requirements would come into effect, and considered an array of factors in setting later compliance deadlines. For each of the main compliance obligations under the Amendments, EPA

<sup>&</sup>lt;sup>5</sup> For example, in describing the EPA Administrator's obligation to "establish an effective date for each regulation at the time it is promulgated," Congress repeatedly referred to regulated facilities' ability to comply with such effective dates:

The effective date may be different for new and existing facilities and requirements for new facilities may be applicable to facilities which begin construction at any time after the first requirement isproposed. Generally. requirements which only mandate changes in procedure can be implemented by new and existing facilities almost immediately. However, other changes which involve capital investment or the development of specialized programs may require more time to implement at existing facilities.

S. Rep. No. 101-228 at 245 (ADD-111).

explained why the respective compliance deadlines were achievable by regulated facilities. See 82 Fed. Reg. at 4,676-78. For example, regarding emergency response coordination requirements, EPA found that one year would be "sufficient to arrange for and document coordination activities." Id. at 4,677. By contrast, for the obligation that facilities adopt "root cause" analysis to ascertain the cause of an incident that could have resulted in a catastrophic release, EPA explained that a four-year compliance date was necessary "to allow facility owners and operators sufficient time to establish training and program development activities." Id. at 4,676.

In the Delay Rule, however, EPA abandoned any effort to assure expeditious compliance with the Accident Prevention Amendments, and indeed specifically noted that "[c]ompliance with all of the rule provisions is not required" during the entire twenty-month delay. 82 Fed. Reg. at 27,142. Moreover, to justify this delay, EPA improperly focused on what timing was "practicable" for *the agency* to reconsider and take further comments on the Amendments, rather than on what would have been practicable for regulated facilities to accomplish. *See, e.g., id.* at 27,135 ("three months was insufficient to complete the necessary steps in the

reconsideration process") and 27,136 ("A delay of 20 months is a reasonable length of time to engage in the process of revisiting issues in the underlying Risk Management Program Amendments"). But agencies cannot "depart from a prior policy *sub silentio.*" *See FCC*, 556 U.S. at 516. And EPA did not rebut (or even propose to rebut) any of the findings of practicability for facilities in the underlying rule. Nor did EPA determine that compliance based on the initial effective date was impracticable or that a later effective date would further the statute's risk-reduction aims. Section 112(r)(7) forbids EPA from deferring the effective date of a final rule under these circumstances.

EPA contends that it has significant discretion in setting (or resetting) effective dates because section 112(r)(7) "does not contain any language limiting 'as expeditiously as practicable' to an outside date (e.g., 'in no case later than date X')," 82 Fed. Reg. at 27,136. But this argument misses the point because the agency did not tie its finding of "practicability" to relevant factors in the statute—namely, the ability of regulated facilities to achieve compliance as expeditiously as practicable. See Reilly, 976 F.2d at 44 (Silberman, J. concurring) (rejecting as unreasonable EPA's interpretation that section 112(d)(9) of the Act

authorized delaying emission standards because EPA sought "to exploit the ambiguity rather than to resolve it, and to advance its own policy objectives rather than Congress").

EPA further contends that, in determining the practicability of a rule's effective date, it may consider "confusion" that might ensue if the March 2017 effective date remained in place while the agency considers whether to change the Accident Prevention Amendments. 82 Fed. Reg. at 27,139. But to the extent there would be "confusion" if facilities implemented the rule's safeguards, only to have EPA change them later, such a scenario would be of EPA's own making, not the product of circumstances beyond its control. This "confusion" justification for postponing the underlying rule to accommodate EPA's policy changes is not a reasoned basis for its delay action. See NRDC v. Abraham, 355 F.3d 179, 204-05 (2d Cir. 2004) (rejecting application of "good cause" exception to Administrative Procedure Act's notice-and-comment requirement based on "an emergency of DOE's own making"); compare Council of the Southern Mountains, Inc. v. Donovan, 653 F. 2d 573, 582 (D.C. Cir. 1981) (upholding six-month stay of regulatory deadline for mining companies to comply with requirement to upgrade portable respirators based on

circumstances beyond the agency's control—i.e., failure of manufacturer to complete field testing of the safety equipment).

### **POINT II**

#### THE DELAY RULE IS ARBITRARY AND CAPRICIOUS

Even if EPA were authorized to suspend the Accident Prevention Amendments pending reconsideration, the agency must further show that it has satisfied its obligation to consider all relevant factors and "give adequate reasons for its decisions." Encino Motorcars LLC v. Navarro, 136 S. Ct. 2117, 2125 (2016); see Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made" (internal quotation and citation omitted)). Furthermore, when, as here, an agency has reversed course from a prior rule in a way that contradicts the factual findings that "underlay its prior policy," it must provide "a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy." FCC v. Fox, 556 U.S. at 515-16. Here, the Delay Rule fails to satisfy either criteria.

A. EPA's Decision to Effectively Rescind the Accident Prevention Amendments for Twenty Months Impermissibly Disregarded Its Findings about the Need for the Rule and the Rule's Benefits.

EPA issued the Accident Prevention Amendments after a series of catastrophic chemical incidents underscored the pressing need for improved safeguards. See 81 Fed. Reg. at 13,644. The agency concluded it needed to do more to "further protect human health and the environment from chemical hazards," 82 Fed. Reg. at 4,595, and that specific regulatory improvements could reduce the probability and severity of chemical accidents, 81 Fed. Reg. at 13,643. The Delay Rule effectively rescinds these regulatory protections for twenty months during EPA's reconsideration. See Public Citizen v. Steed, 733 F.2d 93, 98 (D.C. Cir. 1984) (concluding that interim suspension that eliminated regulatory obligations "should be treated as a revocation"). But EPA lacks any legitimate rationale for disregarding its prior findings and issuing a blanket postponement of the Amendments.

In promulgating the Delay Rule, EPA did not find that the Amendments are deficient or that, if left in place pending reconsideration, will fail to protect the public and the environment from chemical accidents. In fact, in its response to comments on the Delay

Rule, EPA stated that it "does not now concede that it should make the particular regulatory changes [to the Amendments] that these commenters have recommended, or that the Agency made errors in its regulatory impact analysis or rulemaking procedures." *See* Delay Rule Response to Comments (June 8, 2017) at 24 (JA\_\_\_\_).

Indeed, the current EPA continues to stand behind the policies and findings that led to the Accident Prevention Amendments. When EPA finalized the Delay Rule, it issued a fact sheet emphasizing the costs and harms of reportable accidents, as well as the continued need for the Amendments to "help protect local first responders, community members and employees from death or injury due to chemical facility accidents." Fact Sheet at 1 (JA\_\_\_\_). And EPA adhered to its view that changes to the original regulations are necessary because over the last ten years "there have been more than 1,517 reportable accidents," which "were responsible for 58 deaths . . . and over \$2 billion in property damages." *Id.* 

Furthermore, the findings EPA made when promulgating the Accident Prevention Amendments remain the agency's only position on those issues. For example, EPA found that the rule would improve

existing safeguards to protect workers and communities from chemical accidents in light of "lessons learned." *See* 82 Fed. Reg. at 4,595. And it found the rule would reduce fatalities, injuries and property damage, and avoid emergency response costs and environmental impacts from the chemical accidents that occur roughly every other day. *Id.* at 4,597, 4,684.

EPA provided no reasonable justification for eliminating these benefits for the twenty-month period of the Delay Rule. EPA suggests that its twenty-month delay "simply maintains the status quo." 82 Fed. Reg. at 27,138. But as this Court recently recognized, suspending a rule's effective date amounts to a substantive change in law that alters "rights and obligations" of affected parties during that period. *Clean Air Council*, 862 F.3d at 6-7; *see also California v. BLM*, No. 3:17-cv—03804, 2017 WL 441609 (N. D. Cal., Oct. 4, 2017) (rejecting agency's argument that postponing future compliance dates preserved the status quo, where their purpose of the dates was to provide industry time to adjust operations to come into compliance).

EPA's further argues that freezing the Accident Prevention Amendments while it decides whether to change them is reasonable because the benefits of complying with the rule's near-term deadlines are

"speculative" and the benefits of compliance with post-Delay Rule deadlines would not be affected. 82 Fed. Reg. at 27,139. These arguments are meritless and, indeed, directly rebutted by EPA's own determinations. See id. at 4,598, Tbl. 4.

compliance with several provisions of the Accident Prevention Amendments was required either upon the March 2017 effective date or within a year later—both within the Delay Rule's postponement period. The Delay Rule thus has the immediate effect of postponing these measures and deferring the Amendments' important safety benefits. For example, the rule improved the process of investigating incidents by specifying the types of individuals that must be on certain investigation teams, requiring completion of investigation reports within twelve months, and specifying additional topics to be included in such reports. See 82 Fed. Reg. at 4,699, 4,701 (40 C.F.R. 68.60, 68.81). These provisions, now delayed, would have applied to the investigation of certain incidents starting in March 2017. See id. at 4,696 (40 C.F.R. 68.10(a)(4)).

In addition, facilities were to comply with the emergency response coordination requirements of 40 C.F.R. 68.93 by March 2018. *See* 82 Fed.

Reg. 4,696 (40 C.F.R. § 68.10(b)). In other words, between March 2017 and March 2018, facilities would have had to improve coordination with local emergency planning and response organizations. EPA had explained the need for these new requirements by finding that "poor coordination between chemical facilities and local emergency responders has been identified as a factor contributing to the severity of chemical accidents," including at West Fertilizer. 81 Fed. Reg. at 13,671. Now, because of the Delay Rule, facilities and emergency responders will be less safe. For example, facility owners will not have to determine if response organizations' emergency plans address their facilities, nor will owners need to ensure that emergency response organizations are aware of the existence, quantities, and risks posed by regulated substances at their facilities. 82 Fed. Reg. at 4,701 (40 C.F.R. § 68.93).

EPA's attempt in the Delay Rule to write off the benefits of these initial and near-term obligations as "speculative but likely minimal," 82 Fed. Reg. 27,139, is not supported by any factual findings, much less the "more detailed justification" necessary for EPA to establish that its previous findings to the contrary should be disregarded. *See FCC v. Fox*, 556 U.S. at 515. "[A]n agency's decision to change course may be arbitrary

and capricious if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so." *Id.* at 537 (Kennedy, J., concurring).

Second, for several provisions, EPA set compliance dates several years after the initial effective date because EPA found that owners and operators would need that time to prepare. See 82 Fed. Reg. at 4,696 (40 C.F.R. 68.10(d)). For these provisions, facility owners were supposed to use the intervening years to "understand the revised rule; train facility personnel on the revised provisions, learn new investigation techniques, as appropriate; research safer technologies; arrange for emergency response resources and response training; incorporate change into their risk management programs; and establish a strategy to notify the public that certain information is available upon request." Id. at 4,676. Under the Delay Rule, facility owners have no reason to begin such preparations. As EPA itself explained in issuing the Delay Rule, the purpose of its postponement is to ensure that the regulated community does not have "to prepare to comply with . . . rule provisions that might be changed." Id. at 27,139; see also Delay Rule Response to Comments at 19 (JA ) ("without such a delay, regulated parties would need to

expend resources to prepare for compliance with the [Accident Prevention Amendments'] provisions").

EPA contends, nonetheless, that because most provisions have a compliance date of 2021, "any benefits from compliance would not be impacted," 82 Fed. Reg. at 27,139; see also id. at 27,140 (Delay Rule would have "minimal effect on the benefits" of complying with 2021 deadline). But because regulated entities do not have to take these preparatory steps while the Accident Prevention Amendments are delayed, they may not be ready to meet these later compliance deadlines, even if EPA concludes after reconsideration that the rule was appropriate in all respects. If a facility needs four years of lead time to meet a particular obligation (as EPA determined for many of the rule's provisions), the facility's owner will surely argue at the end of any reconsideration that it needs at least the same four years from that point. In other words, the Delay Rule affects the timing of all of the Amendments' substantive provisions. EPA was not entitled to ignore the obvious consequences of its decision when issuing the Delay Rule.

In short, EPA's abandonment of the benefits of the Accident Prevention Amendments for a period of twenty months is "the sort of

'swerve' from prior policy that requires explanation." Shieldalloy Metallurgical Corp. v. Nuclear Regulatory Comm'n, 707 F.3d 371, 381–82 (D.C. Cir. 2013) (quoting Greater Boston Television v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970)). Yet EPA fails to show a recognition that the Delay Rule directly undermines the underlying safeguards it continues to tout, and has failed to conduct any serious analysis that would justify a twenty-month rescission of the critical safeguards it justified with comprehensive findings. See Am. Wild Horse Pres. Campaign v. Purdue, 2017 WL 4385259, at \*5-\*6; (agency acted arbitrarily when it failed to acknowledge it was changing boundaries of protected lands); State Farm, 463 U.S. at 57.

- B. EPA's Stated Rationales for the Delay Rule Are Inadequate.
  - 1. The Bureau's announcement on the cause of the West Fertilizer fire does not provide a reasoned basis to postpone the entire Accident Prevention Amendments for twenty months.

The only finding EPA made in issuing the Delay Rule was that the Bureau's announcement of the cause of the West Fertilizer fire requires reconsideration of the Accident Prevention Amendments. 82 Fed. Reg. at 27,134-35. But even if reconsideration of a rule could provide a basis to

delay its effective date for more than three months—which it cannot (see Point I.A, supra)—EPA has failed to reasonably explain why consideration of the finding warrants a twenty-month delay of the entire rule.

Second, the West Fertilizer incident was only one of several highprofile incidents EPA cited in the Accident Prevention Amendments as warranting improvements to the 1996 regulations. As the preamble of the proposed Amendments and the 2012 petition to strengthen the existing rule reflected, numerous explosions, fires, and chemical releases

that occurred prior to the West Fertilizer incident spurred the amendments. 81 Fed. Reg. at 13,644. And in fact, EPA made this point in response to comments on the Bureau's finding. Response to Comments at 248 (JA \_\_\_\_).

Finally, whatever dispute there may be about the cause of the West Fertilizer fire, there is no dispute, as the Chemical Safety Board found, that a subsequent failure to communicate hazard information to first responders to the fire resulted in a number of avoidable deaths. CSB

For these reasons, EPA has not given a reasoned justification for delaying the effective date of the Accident Prevention Amendments. EPA's current position on the West Fertilizer incident stands in complete contrast to its prior position. EPA's "failure to come to grips with conflicting precedent constitutes 'an inexcusable departure from the essential requirement of reasoned decision making." Ramaprakash v. FAA, 346 F.3d 1121, 1124–25 (D.C. Cir. 2003) (citing Columbia Broad. Sys. v. FCC, 454 F.2d 1018, 1027 (D.C. Cir. 1971)).

## 2. EPA has not explained its blanket delay of every deadline in the Accident Prevention Amendments.

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Even if delay of some portion of the Accident Prevention Amendments were justifiable (the case for which is entirely absent here), EPA has not reasonably explained its decision to issue a blanket delay of the entire rule. Congress directed EPA to compel regulated entities to comply "as expeditiously as practicable," and Congress has explained that "requirements which only mandate changes in procedure" can be implemented "almost immediately." 42 U.S.C. § 7412(r)(7); S. Rep. 101-228 at 245 (ADD-111). Given these directions, and in light of an agency's duty to consider and explain its rejection of any "reasonably obvious alternatives" to a proposed rule, it was incumbent on EPA to justify why it chose a blanket delay instead of a more tailored postponement. See National Shooting Sports Found., Inc. v. Jones, 716 F.3d 200, 215 (D.C. Cir. 2013). Most glaringly, EPA has not explained why it was necessary to postpone the changes in procedure that were to become effective within the twenty-month delay period.

For changes that were to become effective immediately in March 2017, such as requiring that process safety information be kept up to date, see 82 Fed. Reg. 4,699 (40 C.F.R. § 68.65(a)); see also Point II.A.1,

supra (discussing other provisions that would immediately take effect), EPA offered no explanation for a twenty-month delay other than citing general concerns about "confusion" that EPA's delay may have created. See id. at 27,139. As explained above, the agency cannot cite "confusion" it may have caused by freezing the Accident Prevention Amendments as grounds to delay it. And of course, there would be no confusion if EPA had decided to clearly direct facilities to comply with these obligations.

not be implemented on schedule. EPA's failures to reasonably explain the blanket suspension of the entire Accident Prevention Amendments renders the Delay Rule arbitrary and capricious. See State Farm, 463 U.S. at 48 ("At the very least this alternative way of achieving the objectives of the Act should have been addressed and adequate reasons given for its abandonment.").

#### CONCLUSION

For the reasons set forth above, the Petition should be granted and the Delay Rule vacated.

Dated: October 25, 2017 Albany, New York

Respectfully submitted,

ERIC T. SCHNEIDERMAN

Attorney General of the

State of New York

Attorney for State Petitioners

By: /s/ Michael J. Myers

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<sup>&</sup>lt;sup>6</sup> Counsel for the State of New York represents that the other parties listed in the signature blocks below consent to this filing.

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Filed: 10/25/2017

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### CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

The undersigned attorney, Michael J. Myers, hereby certifies:

- 1. This document complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(i) and this Court's briefing schedule order dated September 26, 2017. According to the word processing system used in this office, this document, exclusive of the sections excluded by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1), contains 9,750 words. Because Community Petitioners are filing an opening brief of less than 12,000 words, the combined word amount of the two briefs is less than 22,000 words.
- 2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface in 14-point Century Schoolbook.

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### CERTIFICATE OF SERVICE

I certify that on October 25, 2017, the foregoing Opening Proof Brief of State Petitioners was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system, which effected service upon counsel of record through the Court's system.

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## IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Air Alliance Houston, et al.,

Petitioners,

v.

U.S. Environmental Protection Agency, et al.,

Respondents.

Case No. 17-1155 (consolidated with Case No. 17-1181)

Filed: 10/25/2017

## DECLARATIONS PROVIDING ADDITIONAL SUPPORT for STATE PETITIONERS' STANDING

# IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Respondents.

Case No. 17-1155 (consolidated with Case No. 17-1181)

Filed: 10/25/2017

## **DECLARATION OF AGATA MCINTYRE**

## DECLARATION OF AGAITA MCINTYRE

I, AGATA MCINTYRE, declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct:

- I am the Engineering Manager at the Northwest Clean Air Agency in Mount Vernon, Washington, a position I have held for more than 2 years.
- I have a Bachelor's of Science in Chemical Engineering from Montana State
   University Bozeman. I have been licensed as a Professional Engineer Chemical Engineering in the State of Washington since 2004.
- 3. Thave 18 years of experience with permitting and evaluating air emissions from industrial sources. I have spent 16 years as a permit writer, inspector, senior engineer, and engineering manager at the Puget Sound Clean Air Agency in Seattle, Washington, and the Northwest Clean Air Agency in Mount Vernon, Washington. My experience includes estimating air emissions from the operation of industrial equipment and evaluating the ambient air quality impacts from equipment operation.
- 4. The Northwest Clean Air Agency (NWCAA) is tasked with protecting air quality in Whatcom, Skagit, and Island Counties of Washington State and enforcing federal, state, and local air quality regulations for stationary sources in these counties. Stationary sources include buildings, structures, facilities, and installations that emit, or may emit, air contaminants. One such facility is the Tesoro Refining and Marketing Company (Tesoro) oil refinery located in Anacortes, Skagit County, Washington.
- 5. The NWCAA munitors outdoor air quality for a group of air pollutants known as "criteria air pollutants", for which the United States Environmental Protection Agency (US EPA) has set National Ambient Air Quality Standards (NAAQS). The US EPA set NAAQS under the

authority of the federal Clean Air Act to protect public health, welfare, and the environment.

NAAQS apply to outdoor air throughout the United States.

- 6. The burning of hydrocarbons like natural gas, diesel, and others produces combustion products and byproducts. The list of potential combustion products and byproducts is large, but in general, the following are commonly present from the burning of hydrocarbons: carbon dioxide (CO<sub>2</sub>), water (H<sub>2</sub>O), carbon monoxide (CO), rutrogen oxides (including nitrogen dioxide, NO<sub>2</sub>), particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), and unburned hydrocarbons.
- 7. In addition, smaller quantities of air toxics identified by US EPA as Hazardous Air Pollutants that may cause cancer or other serious health effects, are frequently released during the burning of hydrocarbons. The amount and type of Hazardous Air Pollutants released is dependent on a host of factors, including the type of hydrocarbons burned and the impurities present with the hydrocarbons.<sup>1</sup>
- 8. The US EPA has set NAAQS for the following criteria air pollutants, which are also combustion products and byproducts: carbon monoxide (CO), nitrogen dioxide (NO2), particulate matter (PM), and sulfur dioxide (SO<sub>2</sub>). In addition, unburned hydrocarbons and nitrogen oxides from combustion can combine in the atmosphere to form ozone. The US EPA has also set a NAAQS for ozone.
- 9. As noted in the May 1, 2014, U.S. Chemical Safety Board investigation report, on April 2, 2010, Tesoro experienced a catastrophic failure of a heat exchanger, releasing heated hydrogen and naphtha into the atmosphere. These chemicals ignited upon release, causing an explosion and a fire that continued to burn for more than three hours.

Chapter 1 of US EPA Air Emission Factors and Quantification website, https://www3.epa.gov/ttn/chief/ap42/ch01/index.html.

- 10. As stated above, when bydrocarbons, including naphtha, are humed, they release combustion products and byproducts. The April 2, 2010, Tesoro fire released criteria air pollutants including, but not limited to, carbon monoxide, nitrogen dioxide, particulate matter, and likely also released Hazardous Air Pollutants.
- 11. Criteria air pollutants are regulated because of their potential to cause adverse health impacts, especialty with regard to sensitive populations such as people with asthma, children, and the elderly. They are also regulated to protect against damage to animals, crops, vegetation, and buildings.<sup>2</sup>
- 12. Hazardous Air Pollutants are regulated because they are known to cause cancer and other sertous health impacts, including damage to the immune system, as well as neurological, reproductive, developmental, and respiratory damage.
- 13. Industrial accidents can also result in the release of air plumes containing Criteria. Air Pollutants and Hazardous Air Pollutants that may drift into populated or residential areas. For example, the City of Anacortes lies approximately one and a half miles northwest of two petroleum refining facilities, including the Tesoro facility. Because of their proximity, industrial accidents can result in evacuations, "shelter-in-place" orders, and other emergency response measures for cities like Anacortes.

Dated this 12th day of October, 2017, at Mount Vernon, Washington.

AGATA MCINTYRE

<sup>4</sup> https://19january2017snapshut.cpa.gov/air-emissions-inventories/air-emissions-sources\_.html

https://www.epa.gov/haps/health-and-environmental-effects-hazardous-air-pollutants

# IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Filed: 10/25/2017

## **DECLARATION OF CHRISTIAN BANNICK**

#### DECLARATION OF CHRISTIAN BANNICK

### I. CHRISTIAN BANNICK, declare as follows:

- The following is based upon my personal knowledge, and if called and sworn as a witness, I could competently testify thereto.
- 2. I am an Industrial Hygienist at the Washington State Department of Labor & Industries, Division of Occupational Safety and Health, a position I have held for 26 years. I have a Bachelor of Science in Biology from Central Washington University and have 30 years' experience with industrial and occupational safety in a variety of industrial settings, including facilities that handle hazardous chemicals. I have specialized training in process safety, and served as the Process Safety Specialist for the Division of Occupational Safety and Health since 1998. Process safety encompasses engineering and management safety practices specific to preventing catastrophic accidents involving highly hazardous chemicals. I have been a Certified Industrial Hygienist since 1997.
- 3. Washington's Division of Occupational Safety and Health is tasked with enforcing the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. Pursuant to the Act, the Department of Labor and Industries has adopted specific requirements for employers who use, store, or manufacture highly hazardous chemicals, with the goal of preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. The facilities subject to these rules, known as the Process Safety Management Code, are in large part the same facilities subject to the U.S. Environmental Protection Agency's (EPA's) Risk Management Program.
- In addition to its regulatory functions, the Department of Labor & Industries also
   has a statutory mandate to investigate and analyze industrial catastrophes, serious injuries, and/or

fatalities that occur in the workplace, including facilities subject to the Process Safety

Management code and EPA's Risk Management Program. We also investigate other non-fatality
or non-injury incidents on our own initiative or following incident reports submitted by third
parties. My duties include conducting such investigations on behalf of the State. Statewide,
Washington employs approximately 175 full-time industrial hygienists and safety specialists to
conduct these investigations across all industries with four full-time inspectors dedicated solely
to facilities covered by the Process Safety Management code. So far in 2017, there have been 28
workplace fatalities in Washington.

- 5. Investigations into workplace accidents also often involve outside, specialized expertise in various fields. For example, investigations involving petroleum refining facilities often require experts knowledgeable on the refining process as well as the engineering associated with the injury-causing agent or agents. In those cases, the Department of Labor and Industries will contract out for this work at market rates.
- There have been two major disasters with multiple fatalities at Washington petroleum refineries in the last 19 years. In 1998, six workers were killed in an explosion at the Equalon Puget Sound Refining Co. facility in Anacortes, Washington.
- 7. More recently, in the early morning hours of April 2, 2010, a heat exchanger in the Catalytic Reformer/Naphtha Hydrotreater unit at the Tesoro Refining and Marketing Co. refinery (also in Anacortes, Washington) catastrophically failed during startup activities. The failure caused a large volume of extremely hot hydrogen and naphtha to escape and auto-ignite upon release to the atmosphere. Seven workers were caught in the resulting fireball and badly burned. All succumbed to their injuries within 22 days from the incident. To my knowledge, all of the workers killed were Washington residents.

- In addition to the human casualties, the Tesoro fire burned for 3 hours until it was finally brought under control. The fire caused extensive damage to the facility and resulted in the Tesoro refinery being shut down for seven months.
- 9. I was assigned as the lead investigator on the 2010 Tesoro explosion, with three and sometimes four investigators working under my supervision during the course of the investigation. Our investigation began the same day as the incident, with my team mobilizing to the site to formally open the investigation with the facility owner after determining it was safe to be on-site. During the course of the investigation, and as with other investigations, we identified and interviewed witnesses, negotiated early evidence preservation with the facility operators, and began working on an evidence security plan to ensure key pieces of evidence were not destroyed in the response to the incident. As the investigation progressed, we conducted site visits to obtain photo and video evidence, constructed a detailed timeline of events, and obtained and reviewed an enormous volume of documentation from the facility operator. In all, the investigation took the full time (a minimum of 40 hours per week) of both myself and the members of my team for the entire six months it took to complete the investigation.
- 10. Because the incident involved a detailed understanding of the refining process, I was also required to retain an outside consulting firm with expertise in this field. Although I had one point of contact with the consultant, the consulting work was performed by a team with expertise in multiple subject areas, including the refining process, failure mechanisms, etc.
- 11. During the course of the investigation, and during issuance of the resulting penalty, I also obtained substantial assistance from Washington Labor and Industries attorneys and the Washington Attorney General's Office. Those attorney costs are billed back to the Department of Labor and Industries and comes out of the Department's legal services budget.

Because Tesoro appealed the penalty, legal assistance continued long after the investigation concluded and is, in fact, ongoing.

- As the investigation lead, I was involved in developing the staffing and budgeting needs necessary to complete the investigation within the statutorily mandated timeframe. Although it is difficult to arrive at an exact sum expended during the course of the investigation, the six-month period during which I and my team worked exclusively on the Tesoro investigation cost the State at least \$289,000. This is combined with expert expenses of approximately \$81,000. This does not include legal support for the investigation, which I understand was another significant expense. In total, the investigation constituted an unanticipated and heavy blow to the Department's budget. None of these costs to the State are recoverable.
- 13. Concurrent with the State's investigation into the Tesoro disaster, the United States Chemical Safety and Hazard Investigation Board (the "Chemical Safety Board") conducted its own investigation into the event. Per its usual process following such events, the Chemical Safety Board included a number of recommendations to the facility operator and state and federal regulators-including EPA-arising from the lessons learned from the event. It is my understanding that the amendments to EPA's Risk Management Program Rule, delayed by the action subject to the current Petition for Review in this case, were made in part to prevent incidents like the Tesoro disaster, with the Tesoro disaster mentioned specifically in the final Rule.
- 14. As noted, Washington also contains regulatory authority over facilities covered by EPA's Risk Management Program, and the State attempts to work cooperatively with the federal program.

- 15. Where, however, the federal government fails to adequately regulate worker safety, the State is often compelled to step up to fill any gaps. The Department of Labor and Industries is currently working on amendments to its regulatory scheme to increase safety standards in Washington. That said, uncertainty at the federal level also makes it more difficult for the state to coordinate and harmonize its rulemaking efforts.
- 16. In my experience at the Department of Labor and Industries, and as a trained industrial hygienist, lax regulation of work environments leads to an increase in workplace accidents, with a corresponding increase in State investigations. These investigations, especially those involving the complex and often devastating results of incidents at facilities that handle hazardous chemicals, such as the Tesoro and former Equalon facilities, consume a significant amount of State resources.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this And day of October, 2017, in Lauragham. Washington.

Christian Bannick

# IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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v.

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## ADDENDUM TO STATE PETITIONERS' OPENING BRIEF

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(3) that air politicion prevention (that is, the reduction or elimbiation. Disough any measares, of the amount of pallusants produced or presided at the source) and singoffusion control at its source is the primary responsibility of States and local governments; and

(4) that Vederal Connected assistance and leadership is essential for the development of cooperative Federal, State, teginnal, and local programs to prevent and control air pollution.

#### (b) Declaration

The purposes of this subchapter are--

(i) to protect and enhance the quality of the Nacion's air resources so as to promote the public health and welfare and the productive capacity of its population.

(2) to initiate and accelerate a national research and development program to actileve the prevention and control of air pollucion

(3) to provide technical and financial assistance to State and local governments in conneedler, with the development and execution of their air publication prevention and control pricgrames; and

(4) to encourage and assist the development and operation of regional air pollution preven tion and control programs.

#### (c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote resecuable Rederal State. and form governmental actions, consistent with giga provisions of lids chapter, for pullation prevention.

(Joly 14, 1955, oh. 368, bible 2, \$101, Cornerly \$1, na naded Pub. L. 08-206. §1, Dec. 17, 1965, 77 Stat. 392, renumbered \$101 and amended Pub. L. 89-273, title [. \$101(2), (2) Oct. 20, 1065, 79 Stat. 292: Fuin. L. 90-140, §2, Nov. 21, 1987, 81 61,41, 485; Puib. 1, 161-549, tible 1, §102(£) Nov. 15, 1990, 104 Stat 2400.)

#### COMPRISATION

Seption was thrownly alwestied to section 1857 of this ritle.

#### Zerok Zeottatoras

Provisions straight up those in this section were dodtermed to a prior secretica 1857 of this title, not of the 194 1985, on 160, \$1, \$0 Stat 222, prior to the general amendment of this chapter by Pulo C 49-376

1990 | Sabsept (5)(3) | Poh. L. 10(-549, \$100) k((3), especialat par (2) generally. From to amendment, par (3) results a follows: "that the prevention and contest of all galact properly into the prevention and condict of the poli-tiction act its source is the primiting componentiality of States and local governments. And " Subsection and" after "publishing". Subsection and "lafter "publishing". Subsection of Publishing 100-98, \$100(4)(2), while proper-

1957—Spliged (501) Poblic S 90-48 Experted hand on hanco the quality of "ofter "to protect"

19:5-Colline: (ii) Pub. 1. Ri-372 substituted "this tatie" for "this Act," which for purposes of auditoution has been charged to "this subshapter".

#### EXPECTIVE DATE OF 1990 ANIMONEST:

Pain, L. (51-819, altile VII. 3711ch), Pov. 15 1890 191

Stat 364 provided that.

'41) Except as otherwise expressly problem, the amendments made by this Act (see Tables for classi-

inaction | which be all factive on the date of earletment of this act (Mcv. 15, 1990).

Filed: 10/25/2017

(1) The Administrator's apparety to makes bivil phalities under section 20tor of the Clean Air Act [48] U.S.C. 1999(c)), as amended by this Act, shall apply to violations that occur or concluse on or after the date of charament of this Act. Givil panelities for violations that occur prior to each date and do not continue after such date shall be assessed in accordance with the pro-visions of the Clean Air Act (42 U.B.C. 740) of seq.) in affect imministely prior to the data of susaitment of

Cale Act — "II) The c.Ci) pentitlet provelled under sections SUSAL and VII(d)(II) or the ISENS Act est 63 II S.C. 7924(x), 7515(d)(2)), os amended by this Act, shall apply se violations that occur on or after the late of exact-rings) of this Age. Violations that occur rathe to such date shall be subject to the civil penalty provisions pre-scribed in sections 200m) and 221(d) of the Chem Air Act in office temperaturally peace to the ensetment of this Ass. The impositive authority prescribed under section 213(d)(2) of the Diego Air Act, as amended by this Act, shall apply to probations that morar or continue or or

after size date of enactment of this Apr.

"(4) For perposes of poweraphs (3) and (3), where the
date of a violation cannot be determined it will be asedgred to be the date on which the violeting is alteror-

Екупствую Далу бе 1977 Аминимент, Рановии Ал-CICKS: CONTINUATION OF REALISH CONTRACTS, ALTHOR-ISADONE, ICIO : RECURRIGADAMON POARK

Pub E. 96 95 table 1V, 59% Ang. 1, 1977 91 Stat. 198, as attached by Pub. E. 95 190, §18cb):8: Nov. 16, 1997, 91 Start 14th, provided that "(A; No such kinden, or exher proceeding lawfully

commenced by or explicat the Administrator of any coher officer or employee of the United States in his of-Solal resectly or the triation to the discharge of ble offlood dusing moder the Gleen Air Act [Unw chapser], as in effect immediately prior to the date of encounters of this Acc [Aug. 1, 1971] shall about his ceases, of the tak-ing effect of the amendments made by take Act [see Sheet Title of 1977 Amendment note below. The sourt may, on its own motion of that of any party made at any time within twelve months after seen taking of fact, allow the same to be maintained by no against the Administrator or each of Power or employee

"Hit All rules, regulations, orders, determinations, epocracta, certifications, sustheriesticas, delegations, or other seticies delly issued, made, or taken by or gazexample to the Ciean Alb Act [this chapter), as in effect immentalely point to the date of enactment of these Act. (Aug. 7, 1977), and perfections to any finations, powers, requirements, and duries under the Clean Air Act, as to effort immediately grown to the date of exactment of sale Act, and not enspended by the Administrator or the course shall constitute to full force and offers after the date of exactment of this Act until modified or reoccoded in accordance with the Cleve Aut Aut he amended by this Act (see Short Title of LSTV Amendment nato Eulow!

(c) Nothing in this Act [no: Rhort Title of 1971 Amendment note below) for any action takes, posseant to this Act that it any way offers any requirement of on approved implementation plots in effect nuder see tion plot the Class Alb Act (metrics 7400 of this latis) or Any other provision of the Aco in effect under the Clean Air Act before the date of enactment of this sac-tion (Avg. 1 1577) until modulie) or rescitated in accordence with the Clean Sir Set (this chapter) as amonded by this act (see Short Title of 1917 Amondinant note

"(A)(1) Except as otherwise expressity growthed the emergements made by tols 401 [see Short Vitte of 1971] Amondment mote below; shall be effective on date of enactment (Aug. Y, 1977)

"2: Except as otherwise appressive possided, each fatate regulated to review to applicable imprementation gian by reason of any amendment made by this Act [see

#### §74**9**1 TITLE 42-THE PHRISC BRALTH AND WELFARE

Page 64%

Short Title of 1917 Amondment cole below] shall adopt and administ to the Administrator of the Devironmental Protoctico Administracion such pizo revision before the july; of the date

"(A) one year after the date of enactment of talk Accing, 7 (200), or

milk! of women the after the date of proportization by the Aliministrator of the Robinsonmental Projection Administration of any regulations under an amond-ment mode by this Art. which are necessary for the approval of such pen revision."

#### SHOOT TITLE I) FIRM AN ESTABLE

Pull, Ed. 208 40 by Mag. 3, 1990, 113 Stat. 204, provided. them "This Act [amending specion 2418 of this tible and enacting provisions set one as notes under pertian 7418 of this citief may be cited as the Chemical Safety in formation, sith Security and Funds Regulatory Relief act'."

#### SHOOT TITLE OF 1998 AMERICA PAT

Pub L. 119 388 31, Oct 27, 1998, 112 Stat. 2775, pro-vided that: "This Act jamending section thith of this title and encoding provisions set set as a note moder section Ifilth of this side may be cited as the Berder Smag Reduction Act of 1998'."

#### SHORE THIS OF 1690 AND NUMBER

Puls 1, 201-549, New 15, 1996, 104 Stat. 2550, is popularly bytown as the "Clean Art Act Attendments of 1990". See Tables for classification.

#### SHOWN THE RIDE LISE ANNUINGER

Pub. 1: 97-88, \$1. July 17, 1981, 16 Start 139, provided That this Act (substitling sections 7430 and 7433 of this little) may be 44tod as the "Start Industry Compliance Establish Act of 1981".

#### SHORE THAT IS OF LITT AMENDMENT

Public 1984-15, §1. Ang. 7, 1977, §1. Stat. \$85, provided that 1 This Act (enabling sections 4383, 1458 to 7428, 7450 to 7459, 7410 to 7459, 7440 to 7459, 7440 to 7459, 7440 to 7459, 7440 to 7459, 7440, 7540, 7 consistant reconsions set out as notes moved that section, sections 7408, 7422 Tays. 1479, 7308, Tays. 1740, and 1870 of this intio, and section 182 of Title 15. Commonor and Thouse many be cital as the Cicio Ale Act Amendments.

#### SHORT TITLE OF 1810 AMENIMENT

Pah. L. 31 604, §1, Dec. 21, 1973, 01 Stat. 1176 provided: "That this Act (amouning this chapter generally) may be often as the "(hear Air Amendments of 1970"."

#### SHORT TILLS OF 1957 AMENDARMS

Pub. L. 90-340, \$1, Nov. 20, 1971, 51 Stat. 455, provided: "That this Ace [amonding this chapter generally] may be often set the 'Arr Quality fact of 1987."

#### SHORE TUBE OF 1906, AMERICAN

Figh, L. 18-575, \$1, Oct. 35, 1958, Ell Stat. 164, grownled. "That this Act famending sections 1400 and fills of this title and repealing section 1870-8 of this citie] may to 

#### Якови Тютия

Act July 14, 1985, ch. 800, total (H. \$507, forements \$16, as added by Pub. L. 88 206, \$1, Dec. 17, 1863, 71 Stot. 403, renumbered \$307 by Pub. L. 88-202, total f. \$100(4), Out. 20, 1965, 75 Stat. 898; renumbered \$309 by Pub. L. 90-246 \$2, 500x 21, 1967, \$1 Stat. 499; renumbered \$317 by Pub. f. 91-804, \$15 to 30, Dec. 31, 1970, \$4 Stat. 1965, published \$400 by Act. Stat. 1965, published \$400 by Act Figsty ""This Act (empeting this chapter) may be ested us the "Clean Air Act." Act July 14, 1956, ch. 850 title IL 8261 at odded by Pop T. 83-875, title f. 81018), Oct. 20, 1965, 79 Stat. 932.

and smended by Pub. 1, 93-148, §2, Nov. 21, 1969, 81 State. 495, provided that "Time table fenanting subchapter !! of this chapter may be cited as the National Richesian Semdards Act." Prior as the manufact, by Pub L 90-160, ticle II of an June 14, 1930, was known as the "Meter Vehick AL Poblation Coated Act.". Act July 14, 1935, bit 80, 300, 400 PV, 493, at added by Dec. M. 1970, Pub L 91-504, \$14, 84 Stat. 1999, provided that. "This total functions audichapter IV of the chapter.

ter] may be olsed as the 'Poles Policition and Abace ment Act of 1971.

#### SAVISION PROFISION

Pab. L. 165-349, risis VII, § VIII:s: Nov. 15, 1950, 114' Stat. 389, godwied slight "Bacept as otherwise expressiv provided in this Act [see Twolas for classification], no pain, action, eviother proceeding lewfully commescall by the Administrator or any other prison or employes of the United States in his afficial capacity of in telation to the discharge of his official distinc-uniter the C.-an Air Act [4] U.S.S. (4): et seq. [1,44] is etfect immediately prior to the date of enactment of this Act (Nev. 15, 1990), shall about by reason at the taking attent of the amendments made by risk Act

Reorg, Pint No. 8 of 1970, §70xX3), eff. Dec. 2, 1970, SF F.R. 19835, 84 Stat. 2088, transferred to Administrator of F.R. 1963, 91 Star 1989, transferred to Administrator of Eastroamental Protection Agency furctions vector by 150 in Secretary of Health, Education, and Welfare or in Department of Health, Education, and Welfare which are ediministered through Environmental Health Service, including (inching exercised by Noticual Air Tellusion Common Administration, and Environmental Health Services Convented Administration, and Environmental Medical M Control Administrations's Bureau of Symy Waste Main-agement. Resease of Water Hymmene, and Russam of Ra-diological Health, Jacopt itsoling as functions carried out by Europe of Radiological Health pertain to remittion of cultation from consumer products. Including electronic product radiation, validation as exed in healthe arts propagational exponents to padagation, and resum él. leclurical annataneu, usal training related to re-duction from communes goodnats. Padration en asset hi healting write, and occurational exposure to industrion.

#### EMPAGE OF SMALL COMMUNITIES

Pub. L. 101-MS, table MILL \$819. Nov. 18, 5900, 104 Stat. 2501, provided that "Betting implementaring a provident of the Artificial for classification), the Administrator of the Employmental Protection Agency shall consult with the Beself Communicies Coercienter of the Environments) Protection Agency to determine the topact of such provision on small communicities, (nebaing the estimated cost of compliance with such provi-

#### RADON ASSESSMENT AND MODIO-COOK

Fob. L. 98-995, Style I. \$138/80, Oct. Jr. 1986, 100 Sept. 1868, as expanded by Pub. L. 103-382, time V. §50(c). Nov.

10, 1866, 112 State 1994, provided that:
(11 National: Addressment of RADON (AS. No later than one year after the enactment of this Acu (Ova. 11, 1989], the Admanistrator shall entrall to the Congress a

report which shall, to the extent possible—
"(A) blentify that locations in the United Brates
Where codes is found in structures where propin surmail's lime or work, including educational bietatic-

teons;
"(B) ossess the levels of radon was that are present

in such shipecures:

(30) Generalize the level of padou gas and padou daughtern Which poems a threat to human health and seven for each location identified under subparawhich (8) the extent of the threat to human builth:
(D) determine runtimals of reducing or ear facting

the threat to burgan beaith of sadon gos acc rados

Saughtern and
(30 include exclusive and public information materials based on the fundings or research of miligating

3 74UF

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· (8) Элером интонатрон билонатратгон россияли —

"(A) DESIRESTEATION PROGRAM. The Administrator shall conduct a demonstration process in to test metheds and technologies of reducing or eliminating radon gas and radon daughters Where H poses a threat to hamon bealth. The Administrator shall take into consideration any demonstration program underway in the Theology Prong of Pennsylvania, New Josep. and New York had at other sites proof to enectment. The demonstration program under this section shall be conducted in the Bending Pryon, and at such other

with an the Administrator recalders appropriate.

((ii) landingry.—Liability if any, fee parsees appropriate to the radio nucligatinu demoustration program avvaorized under tine gripge:then shall be Gatelzhized under grundpies of ex-

istiak 'se

(5) Constituentian or 890th04 - Vothing to this solecological assistance of Lourising at Carta moves tracer to carry onthing regulations program on Ana Au-riains other chain concurred, development, and related reporting, intornacion dissembnation, and coordination activities specified in this autemation. Mathens in beingraph (L) of (3) shall be construed to limit the sother-region the Administrator or of any other agency or inattragmentalisty of the firstend States tunier any other anthatity of law."

#### **БРШ**І Сомтую: Тро-Кожком

Feb L. 98-458, tiple 5, \$10000), Oct. 17, 1908, 190 Stat. 1580, provided that.

- (1) Byrkanishwast of Pandham. Within 186 days of exactimans of this subsection (Not 11, 1986), the Secrelary of the United States Department of Energy is diperhad as every set a progress of testing and availability of technologies which may be utilized in responding to higaefied ganeous and other inspedous substance spills of the Lumethal Caseous Pucts Spill Test Pacific that threaten product health or the Anthrodoment.
- (3) Thenevoluge turkeren (o empying out the progrant extentioned maker title authorition, the Secretary shall conduct a technology transfer program that, at a manamum –
- (A) decuments and archives spill postrol techon!ney;
- "(B) Investigaces and analyses seguilicant hazardnus apit): Lacidonts
- (d) šavaloga nud providta generša emergenav pocada piene.
- (D) documents and ambives spill cost mentle;
- (E) develops entergency action plant to respond to ಮರ್ಟ
- rtP) conducts training of godinescores personnel:
- 1999) se tablishna aufety atandarda tai gurabunol exgaged in apit) response with other "(3) Contracts and GrabCS.—The Secretary is de-
- rected to enter into contracts and growth with a fignpeofit arganization in Albany County, Wyonaing, that is augustic of providing the necessary technical support and which is included at curificamental activities relat od to spon besorfions substance related energencies.
- 14) Use of Bits The Secretary shall arrange for the car of the Liquetiel Descous Publis Spill Tota Pacifity to carry cost the provincions of Cale authoriting

BALION GAS AND INCADE AIR QUALITY PERSASON

Path, J. 99-488, bittle TV. Oct. 27 1988, 100 Stat. 1986, provided that

"ARC. OIL SHOUT TOTLE.

-This title may be cited as the 'Hadon Gee and Indoor All: Quality Research Articl 1986.

"87C, 60J, FINDINGS

"The Congress finds that

"(1) High involute of subon gat gots a second health threat in atministrate in on thin alread of the country.

 (3) Various scientific syndles have suggested that exposure to redon, including exposure to naturally

constraing realing significations are polluterate, poses w public benith risk.

":8) Existing F-ders! redout and radon: Alz not beland maining programs are fragmented and underforded

34) An indequate information base concorning expo-Sare to tador, and ardune all politicants should be de-volcted by she appropriate Pedecal agencies

ныяс час байов одо эмо посож ане quasifim RESEARCH PROGRAM.

"(a) HESIGN OF ADDINGAR —)"he Administrator of the Knymnonwoltal Protection Agency shall establish a redoored but age modes to recommend with respect to redon gas and indoor

ait grather Buth program shall be designed to ...
\*\*15 gather data and information on all aspects of uniting an quality is resident to contribute to the paderstanding of health problems separated with the es-

istence of air pollutions to the indoor environment:

(8) populate Pederal, Blate, local, and private resears and additional development efforts relating to the ind-

provenient of andoor air quality; and (3) seems appropriate Pederal Government actions to mittgate the caybonmoutal and benith risks acco cloted with index all quality personner.

"(to Program Ragonisments.—The research program)

regimed under this east on start and dom-(1) research and development concerning the identification, obstactarization, and monitoring of the rounce and levels of indoor als pallution, including malan. Which includes sewants and development or lacting Co-

"(A) the inexprenent of various pollutant con-

continuione and thoir strongths and sources.

"(B) high-rask building sypes, and

"(C) instruments for indoor air quality data oni Jection:

'(2) research relating to the effects of indoor air pollution and ration on human health; (3) research and development soluting to control

Dickminiognomic other mutigation measures to present or above indoor air pollution (including the developmany evaluation, and rearing of individual and ga-

merus control devices and systems:
"(4) detabustration of sauthoda for reducing or stemmatting butger our perfection and restore, medicaling sestian, venting, and other meshada take the Admin-

Estrator determines may be effective

"(6) research to be carried out in conjugation with the Secretary of Rossing and Hour Devilopment, for

Use progress of developing—
"TA) methods for assessing the potential for section contemporation of new construction. Including (but not limited to: consideration of the moistore cou-Ains of well, parcellar of each and racking content of

soll, and "(B) design insasures to avoid indoor air poliu-

waa: abb

(6) the dissemination of information to assert the public availability of the findings of the activities ander (2) is section.

prised of individuals representing the Swises, the apientrice contenualty, industry, and public interest argu-mizations to assist him in communic out the research

massesing to seeing mind in Contrying out the Presence program for salon gos and indexy all quelley.

"Ad Development on this Act (Oct. 1) 1926], the Administration shall submit to the Consises a plan for implementation in the research program under this seeing to the Administration in the research program under this seeing. tion. Such plan shall also be submitted to the EPA Schance Advisory Round, which shall, within a maspinable period of Hige, submit the commente on such plan

to Congress (a) APPOST —Not later them a years after the equat-ment of this Art [Oos. 17, 1985], the Administration shall subtell to Gaugines a report respecting his actualities. under this testion and making such recommendations za zppcagujata.

9440 6428

#### PERC 401 CONSTRUCTION OF TUTUE

"Forthing In this title shall be construed to authorise the Administrator to carry and any regulatory program or any activity other than research, development, end related reporting. Information disserting that the arthorism shall describe too notive bee expected in this little Notation in this citle shall be construed to Jimst the authorism of the Administrator of cf any either agency or instrumentally, of the Lutter States make any other authorism for of law

#### SBC 406 AUTHORIZATIONS

"These are authorized to be appropriated to carry out the activation under that title and under section till's' of the Syperfluid Amundaments and Reacthburgation Act of 1980 (relating to paskin was approximate, and demonstration program) (section 113(b) of Pob. L. 95-49), set out as a rante above) not be exceed \$5,000,000 for each of the flegal years 1981 1988, and 1989 Of social class appropriated in Repail years 1967 and 1003, hep-th/the shall be interested for the limplementation of section 113(b)88."

#### SHUDY OF UDGSS AND COORDIN (WINSTONS

20th L. 18-95. (Like TV. 5 48th), Aug. Y. 1977, 90 Black.
793. directed Administrator of Britishment of Proteintion Agency to conduct a study and report to Constress soft later thus. Jun. 1, 1179, on effects on protein handly and welfare of odors and odorstal emissions, source of such emissions, technology or other measures available for austral of such validicts and contact of such total relief or measures, and costs and constitute & Effectioning measures of stranging to what and measures of such

## 1.55 OF CREMENT CONTANDAMON FROM BHUMBING PRO POLICEUM FOUND IN HERAX TISSUS

Put. L. 16 S6, table 17, § 400c). Ang. T. 1977, M. Stat. 202, directed Administrator of EPA, not larger than twister grouter after Aag. 7, 1971, to publish unroughout the United States a list of all known chemical conjumitation requires the Conformal Example of Mannan through the States and all 9 Seas housen those pollution which have been found at home through these such that in the prepared for the Chitad Blates and to indicate approximate number of masse, range of locals found, 200 man levels found, directed 5 dimmestrator, not later than algebra months after Aug. 7, 1977, to publish in some manner on explanation of what is known almost the manner to which otherwises entered the environment mand theresites the month that can disected Administrator, in committation with Dathman Institutes of Health, the National Center for Health Statistics, and the National Center for Health Statistics, and the National Center for Health Statistics, and lowering ments. In, if fundable, combust an epithemiological staty to demonstrate the environment on the house the asset of the fibrial States is only a tenter, and the results of such industrial stage of the fibrial States is only to delegate an appropriate regions or areas of the fibrial States is only to be reported an apport as give typoble, to appropriate regions of Congress.

#### SECTION ON PRESIDENCE AND QUALITY

From its \$5-00, thile IV, \$600(1), Aug. 2, 1971, 91 Stat. 190, directing Adminishment of RVA to combuct a study of our quality in various areas throughout the country involveding the galf coast region, each swelly to inclinity analysis of frequet and continuous of such substances to the matter and continuous of such substances to visibility and probe health problems in such messa, with himminishment to use environmental health appets from the Rational Institutes of Resident and offer postside apearies and cognitivations.

#### RAMBOAD ESPECIS STUDY

Pub L 95 55, tiple IV, 9494, Ang 7, 1577, 91 Stat 791, as anaezakań by H. Rast 549, Mar. 25, 1080, Circsted Adinometroper of RPA to consided a study and anythical fical of ensistions of air politakana from ratiosal luxur

crotimes. Excurnitive ongines, and secondary power scarces in califoral colleg speck, in order to determine extent to which such emissions affect an opacity in all quality control regions throughout the United Status technicipality fearthility and current state of technology for controlling spot emissions, and status and effect of current and proposed State and foom regulations effecting such emissions, and within one handred and eighty dids after commencing such study and investigation. Administrator to enforce a report of such spotly and revealing to the commencing of the commencing and respect of such spotly and investigation, to Smale Committee on Environment and Public Works and House Committee on Environment and Public Works and House Committee on Environment and Dominators.

#### Shary ARI Шайрыт Серизкагыр Балгайыс Аррикажев та Сантжовына Анг Росьиттан

Path. L. 05 05, title 17, §406. Ang 7, 1977, 05 Stat. 794, directed Administrator, its conjunction with Octometr of Common Advants, to conjunction a study and aggregation of economic measures for control of all polinition which occid strengthen affactiveness of existing methods of confuciling air golfation, provide insectives to shade air polinition greater than that regained by Clean Air Act, and serve as primary incentive for controlling air polinition problems not addressed by Clean Air Act, and directed that, not later than 1 years often Agg 7, 1977, Administrator and Council conclude study and submittal apport to President and Chegroos.

#### - Матюмаз, Головтриат, Рошцитон Сектери, Соруюць

For provisions totaling to establishment of National Industrial Pollution Control Control, see Ex. Crd., No. 1589, Apr. 9, 1910–35 P.R. 5488, set and an apole under specific 431 of this title.

## FERSON COMPERANCE WITH PRODUCT COMPARE. STANDANDS

For providing relating to responsibility of head of each Emergence agency for compliance with applicable polintron control standards, see Ex. Ord. No. 1208, Oct. 11 1275, 43 P.C. 27007, set out as a note under section 400 of the tyle.

#### Basautive Capen No. 10179

Ex. Gad. No. 10179. Aug. 31, 1998, 32 F.R. 5881 Which related to cooperation of Factoral automotic with State and local suchoristet. was superarded by Ex. Old. No. 1136, Key 26, 1968, 31 F.R. 1965, formerly set out under section 2008 of this title.

#### RESECUTIVE GRUEN NO. 11507

Ex. Ord. No. 1150. Feb. 4, 1970, 35 F.E. 250, which provided for prevention, control, and abatement of air polarism at Pudost Reditties, was supersoled by Sc. Ced. No. 1758, Dec. 17, 1972, 38 F.R. 3758, Connecty set out as a gots under section SEI of this title.

#### 47402. Cooperation activities

## (a) Interstate conperation: uniform State taws; State compacts

The Administrator shall oncourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage Um obsertment of insproved and so far as proticable in the light of varying conditions and needs, uniform State and local laws relating to the processing and control of air pollution, and encourage the making of agreements and compacts between States for the prevention and control of air pullation.

#### (b) Pederal cooperation

The Administrator shall cooperate with and concernse cooperative activities by all Federal departments and agencies having functions re-

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TITLE 42-THE PUBLIC HEALTH AND WELFARK

Page 6244

BY8—Sateres: (場合人A)(は、18人4)(長) Polic To 26-6本。 §LWaV(2), substituted monder thas secution" for "umder enbesid≥en (h) of f≥js sed⊈où

this protion", respectively 2007—Schman, (anti. Pul. D. 60-08, §160cm(LAS), added subgars (A), (B), and (C), subothered "Bo the pulpose of embracygraphs (ANI) and (L) and (E), a standard of performance shall reflect? (or "a standard for some slope of air pollutants which reflects", "and the percontage indepths arbitrarile for "arbitrable", and technological system of continuous entreson tacture tion while (taking into consideration the rost of adislaving such emission adduction, and any parate quirty health and anyronment impact and energy re-quirty health and anyronment impact and energy re-(puring into account the cost of echaving such relatitions: "In existing provisions, and inserted provision that, for the yarpeso of subpressions (LAAH), any cleaning of the faul or toduction in the pollotion offer. actemptous of the Now) wilker extremition and prior to combination may be credited, an determined under repri-lactions pectholizated by the Atlaninistrator, to a source

which himse suck (ad).
Subsect (ad).
Subsect (ad)?: Pub. L. 95-95. (109(c)/1)(B). Added per (1) deflated recimalogical stratem of continuous state. store recognition

Fub L. 55-95, §108(f), added par. (7) directing that mades certain electrometanous a conversion so coal sot by deemed a modification for purposes of play (2) And

School, (a)(7), (3) Pub. L. 96-150 §14(a)(7), cedesig

respective condition (V) as (6).

Relace: (hytr(A) Pab. 1. 55-55, § obtain, substituted is such list of in his technique. It courses, or excluding significantly to, air pollution which may reasonably be settictuated to proteinger, due "adeb list E be determined it may contribute significantly to air policition which exuses an example to the endanger metric off, Spheet (h)(1), Puls 7, 95-95, \$169(12) watercoast.

shall, at losot overy four years; roview and, if appropracte," for "may from Succ & time,".

Subsect (b)(6), (6), Pub. D. 98-85, §109(c)(3), added pers.

(i) and (ii)
Subsect [chi], Pub. to 18-56, \$\$(\$)(0)(1), strate2 out

"Vescept with respect to new sources owned or open bed by the Dented States!" after "Imperating and enforce sasah at ürətərdə

Subsect (ditt): Pub. D. 85-85. §(09/b/()), substituted "attendants of paylormance for "emission structureds" and inserted provisions disectles that regulations of the doministrator permit the State in applying a standard of performance to any particular source under a unbentition plan to take late enconderation, among

other thotars, the remaining essent like of the Arkting source to which the standard applies.
Subsect (701) Fig. 1. 18-45 \$100,1919, provided that to promulgating a standard of performance upon a plan, the Administrator late anto consideration, among other factors, the remaining upon the factors, the remaining upon the factors. saurces in the extegory of warnes to which the standand application.

Subsects: (f) to (f) Public. 85 85, §105(A), added each

Subsect. (j). (k) Publ 1: 85-190, 4(4(4)60), (s), release-mated subsect. (2) as (j) and, as so cedeslationed, exb-statuted "(R)" for "(8)" as designation for second subpar in par (3) Permir subsect (1) added by Puls L. 95-85, §109:e), which related to compliance with applica-

ble standards of performance, was attack out.

1'ob L. 35-35 (1963), added subset (n)

1971—Authors, (bk1:(3), Pub L. 52-157 substituted in Pers sentence "publish proposéd" for "proposé".

#### ESSENTING DAME OF 1971 AMERICANDAM

Amendados by Fub. L. 85 50 effective Aug. 3, 1977, eanapt on otherwise explansity probabil, see election 4604). of Path 1, 85-45, extincit as a note contented section 740; of this title.

#### ARRIUGATIONAL

Section 400(b), for of Phib. In 199-549 provided that: "Hig Revision Phib Digations.—Not, labor than three peats after the date of exactment of the Coet Air Act Ambahasan is of 1500 [Nov. 15, 1990], the Administrator shall promulyste reviews regulations for standards of performance for now from foul fixed electric intrincy ubita connueuclig classraction after the date on which much regulations are proposed that, at a intelement, re-quire shy tourse made to much revised standards to must suffer dioxide at a talk not greater than whent have resulted from numphance by with snarce with the applicable standards of performance under obly oscion [aunending sections 701 and 7479 of this title] prior to such revision.

Tic) APPLICABILITY—The provisions of embeddions (a) (amending this section) and (b) apply only so long or the provisions of section (1886) of the Circa AL: Act (42 U.S.C. 765(b(s)) remeta in offices "

#### Трыкваев ор Вимеетака

Enforcement functions of Administrator or other outcixi in Kraimamental Protection Agency related to compliance with new source performance etaplierds compliance with the section perception of transportation contribution, and initial operation of transportation system for Consider and Alaskan natural sea transferred to Pedern Pospeece. Office of Federal Impactation to Alaska Natural Cas Transportation System, antili fast analycasary of date of inithal operation of Alaska Natinal Oan Transportation system, see Reorg. Plan No. 1 to, 1979, eff. July 1 (1979, 9210214), SINA. 44 F.R. 2022, 1988, 59 Shet, 1973, 1978, set out in the Appendix in Title 5, Suvernment Uncarliation and Bri players, Office of Foderal Inspector for the Alaska Nat-ural Gas Transportation System shallshed and func-tions and stationity vegted to Impended transferred to Secretary of Pinergy by section 3012(h) of Pub f., 528-580, sec out as no Aboltdon of Office of Federal In appetite nuts ands section 1994 of Table 15, Companyon and Table. Punctions aid applicably vested in Sec. relary of Francy subsequently transferred to Pederal Crowdonasco for Alaska Matural Gos Transportation Projects by section 70th first Tible 16

#### Рживима Домпика дин Рилскирима

Solts, Actions, see other proceedings lewfully comminimal by or against the Administrator of HEN other officer on employee of the United States to his official cappoint or to relation to the distinge of his official critics under see July 14, 1965, the Clean Alt Act, as in effect momentately product to the concentrate of Paul L. 95-96 [Aug. 7, 1971], had to shall by respect of Paul L. 95-95, set one of the taking effect of Paul L. 95-95, set one of all Paul L. 95-95, set one of an Effective Date of 1977 Americans note ander section 1401 of this alshe

Moterization on Besolvaion of Dulys, Deckerhoos, ONUSSO, DECESSIONATIONS CONTRACTS, CRITTAIN CATIONS ACCORDINATIONS, DECESSIONS, AND OTHER J. 014 0845

All rules, resulations, orders, determinations, contracts, restifications, puthorizations, delegations or ersons, remaindation, radinal resistors, delegations of cather accisons duly issued, made, or taken by or pursu-ant to act July 19, 1988, the Clear Air Act, as in effect conceedations grain to the duly of constituent, of Pub. 1, Re-95 (Aug. 7, 1999) to epotings in Jul. Torce and effect until modified or irradaded in accordance with sec July 14, 1955, as amonded by Pub. L. 95-95 (this chapter), see section 1964b) of Pob. L. 15-95, not out as an Affective Data of 1917 Amendment note under section 7901 of this

#### 97412. Hazardoos air pollutants

Per purposes of this section, except subsection. (e) of this sectionPage 8265 TUPLE 42-THE PUBLIC MEALTH AND WELFARE

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#### (L) Major sources

The term "major source" aways any sta-Monary source or group of studionary sources located within a configurate area and under company control that eights or has the pater. tank to emit considering controls, in the aggragate, it tous per year or more of any havantous air pullutant or 25 tous per year of more of any combination of herardors are pollutanas. The Administrator may establish a lesser gasatity, or in the case of radionuplices dif-Jeront materia, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, passisteace, potential for bloadenimulation, other charactemetics of the air pollutant, or other relevant factors.

#### (2) Area source

The term "area source" means any stationary arome of hissantons air pollutants that is not a major source. For purposes of this section, the term "area source" shall not include motion volucies or nonroad volicios arbitat to regulation under subchapter II of this chapter.

#### (3) Stationary source

The term "stationary source" shall have the same meaning as such ferm has under section 7911(a) of this title.

#### 441 New source

The term "new source" means a staticoard source the construction of reconstruction of which is commerced after the Administrator first proposes regulations under this section establishing an emission staticard applicable to such source.

#### (5) Modification

"The some "modification" means any physical obange is, or change in the method of operation of, a major source which increases the accust emissions of any hazardous air political such emisted by such source by more than a deputions amount or which results in the emission of any hazardous air pollutant and previously emitted by more than a do minimis amount

#### (#) Hazardons alt politient

The term "hasardous air pollulant" means any ah-pollulant listed pursuant to subsection (b) of this section.

#### (f) Asivores cuvironmental affect

The term "adverse entironmental effect" means any significant and widespread adverse effect. Which may reasonably be anticipated, to widdlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatment species or significant degradation of environmental quality over broad areas.

#### (8) Electric utility steam generating unit

The term "elevane utility steam generaling unit" means any fossit fuel fired purchastion unit of more than 25 megawatts that serves a generator that profinces electricity for said. A unit that cognucrates steam and clearnary and supplies home than one third of its promittal electric output capacity and more than 25

magawaits electrical nutgat to any utility power distribution system for sale shall be considered as electric utility steam generating unit

#### (8) Owner or operator

The term "owner or operator" means any person who owns, leases, operates, controls or supervises a stationary source.

#### (10) Existing securce

The form "existing source" means any stationary source other blank allow source.

#### (11) Carcinogenic officet

Hinless revised, the term "carennogenic effect" shall have the menning provided by the Administrator under Guidelines for Carcinogenic Bish Assessment vs in the date of enactment. Any revisions in the existing facile lines shall be subject to netice and opportunity for comment.

#### (b) List of pollutants

#### (1) Initial list

CAS

The Congress satisfication for purposes of this section a list of hazardons air publicants as follows.

Chatalast name

Diff.ppp=	Coordina, partie	
15070	Acesaldohydo	
destá	Albertamiche	
75050	Avakolitrile	
98583		
32563	2-Acoty/inmizoDanrene	
141560	Aprolata	
79001	Aci yaxmada	
	Aprylic wild	
IVIT131		
107/151		
	a Aminobiphenyi	
	Auditho	
90740		
	Asbestce	
	Bauseza (Indiuding between from gasoline)	
	Penalituu:	
	Benzol myblionide	
100147		
	Biplienyl	
117417		
542853		
	Promotorn:	
	1,0-fout-alteres	
	Çalcige: cyanomido	
	Ceprobactam	
	Capten	
	Carberyl	
	Carbon distillide Carbon te trachicoble	
952,5		
403331	Carbonal enline	
120908	Catechol Uhkeramken	
	Ch2ordaga	
	Chiorise	
	Chicacacacacacacacacacacacacacacacacacaca	
A29274		
146901		
5.0136		
577913		
150307		
	Chloroprime	
	Cresole-Cresylic actic tisomers and mixeses:	
956H7		
	10 m = 0 m	

The References of Test note below.

Filed: 10/25/2017

	·		
GAS nombed	Observed memo	GAE misiles	СЕссий-Ай пашии
103.04	m-(Treal	4200	4-Nttruhiphenyi
	p-Cressi Cumene	100007	4-Mtaropheco!
58339	Cumene		2. Pitroprogane
94757	2,4-D, galtzi and estecs DGE		N-Nitring-M-mathyluine
	Diamentione .		N-Nitrosidimethylamine P Nitrosimorpholinu
	DiC-enzofu runs.		Panathian
96138	L.8-Debrumo-7-chloropropunk	87580	Pentacylogogi krokenzana (Quantoberwaga)
84742	Directy/phi2/slate		Pensachterophonol
300461	l 4-Dichlarobenzene(n) 8,9-Dichlarobausidaua		Phenol p.Phenylenydiamins
111.444	Dightorouthyl stare (Bis(2-chlorouthyl)states		Phospono Phospono
942/56	1.2-Dichlorogropede		T-hughine
	Dichloryos	1722340	Phosphoras
311423 191007	Disthanniannan N.N Disthy) unilina (N N-Dimesbylaniiine)		Patholic antiquality
64615	Diethykaulias:		Polychiotynesed topbenyls (Aroeleya)
1192164	a,3 Dimethoxybensicline		1,3-Progané éaltons beta-Prografischope
801.17	Dimethyl omicoszobroscoc		Propignaldehyče
119937	3,P-Dimethy1 behandles		Веприков (Вируки)
1934 :	Dimothyl certeracyl chlorele Directlyl formam#:	78875	Propysene Globloride (12-Dichloropropage)
57147	La-Diorethyl bydrasine	75689	Propylems oxide
	Thromethy 1 purchases	76260U	U:>Propylonamino (2-Methy) astridano) Quinoline
	Demailight sollfelar		Qui page
E84531	4.6-Danihuo-o-crosol, and multa 2,4 Danihuophenoa		Styrene
	2,4-Deuts atolaene		S Lугини нжиза
	1,4-Daname (1,4-DistinyResentation		#A7_8-Yelan uplesed the nac-g-district
199967	1,2-Highenyihynirazunk		1.1.2.2 Tetrachilococtnane
106398	Epichiorahydrin (I-Chlore-Kü-epakyprogenii)		Težrachlost-Chylete (PenchlomerAylacus) Thomium tetraphicolog
10686Y	1,3 Sponybutane Sthyr acrylate		Toluene
	Fithy I benzerse	95407	7.4-Tokasae dierotoe
	Othyl mathemate (Orethau)		2.6 Tolmone diksnoyanata
75009	Ethyl chloride (Chlorosthann)		e-Tránsálas
	Ethylene dikromide (Dikroznosthane)	195691	Tosagheno (chiomnated campheno) 1,2,4 Teichiomhaucana
	Nithy tene doch totaka (1.2-Dichlaraeshane) Ethylena glypel	79005	L.1,3 Telehioraethaue
101564	Bthylene (Mal/Mine)	790UA	Tricklareethylene
75218	Ethylane axide	95554	2,4,5 Teichkarophonic)
96450	Athylene thiouseu		2.4.0-Trichtoupphencl
TEM S	Ethylidez- (significable (1,1-Decklarcethane)		Triethylamine Triffmedia
	Pormaliebyde Repreciles		2,2,a Trimethylpentnua
	Hemschian chemicine		Vinyš anetale
	Regogn to cive tadlenk		Viny! bromide
	Hexachlorgeyelepentactions		Vrayi dalorlile
	Resolutorostitane fracumethyleno-1,6-dissocystate		Vinylidena ebloviće ().1 Dichlarcethylene:
	Weather the interest of the second		Xylenes (outmers and mixture) o-Xylenes
	Hexans		m-Aylene
502018	Hydrazine		r-X2-lenes
96499110	Rydrendilorta acid		Austriany Compounds
199919	Hydrogon Charles (flydroffuncia acid) Hydrogainene	п	Arsanie: Ozngóuzek (Inórgánie: Inolušíny arv
1031	Тиоденнови	0	sans) Bergiliam Cetapoutda
58399	Idadata (ed isomera)		Cultratum Compounds
	Ratale anicotrido		Chromiara Compounds
	Kethaud		Collect Congognils
	Kethoxychlor Sethol bromide (Bromomethank)		Coite Oved Bimiselogs
	Methyl chloride (Chloromethar-)		Grazide Compenson) Glypp) ethers <sup>s</sup>
	Mothy) eldoroform (3.1.) Trichloropthane)		Lend Compounds
	χethy) ethyl ketime (2-Bat≥nocc)		Mangacese Compounds
	Methyl hydrasine		Meanury Compounds
	Methyl codide (fodomethous) Methyl coding (liketone)		Pine saineral fibers <sup>a</sup>
	Mothy) Immyana's		Nicket Conspounds
60125	Moshy) mechacrytate		Polycylic Organic Matter* Radicanelidra fineladiny todon'/
	Michael notyl edier		Solumium Sompounde
	6.4-Methydens htp://doi.org/unitans/ - Methydens of leader (Dichlaramethans)	NOTE:	For all listange above which compain the word
	Methylene chloride (Dichloromethane) Mathylene diphenyl diesogyanate (MDI)	**************************************	unik i Aunt for Alycol Ashara. The Editowina Ab-
	£4-Methylaned#niline	Cues: Un	ness diinervose apecified, thase listings are de- Inchidiga pur motore complesi culturale e rice.
91203	Maghthaleno	gantacing	iese alberonse apetitied, thisse listungs are de- izohuding eur zhigne chamical suledau, a chat The name! chemical () e. astimoza, arsenso, part of that chemical's imbantuntale.
*###	Mitarohemanan	oca yas p	ert of that chemical's infraction tole.

TITLE 92-THE PUBLIC HEALTH AND WILLIARK

§ 74 I 3

\*XCS where X = H or any other group where a for-gral disconsisting may occur. For example RCS in Ca(CX). \*Includes record and distance of allythese global.

Pirtinder memo and disethers of Albrians glocal, distribution glycol, and breshvione glycol, and breshvione glycol, and breshvione glycol, and coloracity, and one of a large memory of a large property of the sample of the samp

for other investigation of the state of the

A type of at redipartive feesy

#### (2) Revision of the list

The Administrator shall periodically review the list established by this subsection and pub-Hish the results thereof and, where approprison, revise such lies by rule, adding politiants which present, or may present, through inhalation or other routes of exposure, a threat of ofverse human bealth effects (in olading, but not limited to, substances which are known to be, or may responsibly be anderpased to be, cardinog-side, metagenda, twistogenic rearutoxia, which 66000 reproductive Aystanction, so which are acutely at chronically toxic) or adverse environmental effects whether through ambient concentrations, bloascumulation, deposition, or otherwise, but not including releases subject to regulation titues a se cordee ethi io (r) antiqueday nobra of emissions to the air. No air pollusant which ja histod updar section 7908(a) of this title may be added to the Hat contour this saction, except and their sociation of this scritions shall not apply to ear pollutant which independently meets the listing criteria of this paragraph and is a precorecy to a poliutant which is listed under section 7908(x) of this title of to any politicant which is in a class (Cpoliticants heted under such section. No substance, practice, process or activity regulated under subphapter VI of this chapter shall be subject to regulation ander this section solely due to the adverse effects on the environment.

#### (3) Petitions to modify the list

(A) Beginning at any time wher 6 months after November 15, 1990, any person may petition the Administrator to modify the list of harandous our pollutables under Citie subsection by adding or deleting a substance or, in case of Histor pollulants without DAS numbers (other than coke oven emissions, minoral libers or polycyclic argenic matter) (emoving certain unique substances. Within 18 months after recoupt of a patition, the Administrator shall eftheir grant of deny the position by publishing a written explanation of the Asabbe for the Administrator's decision. Any such politica shall include a showing by the petimoner that there is alequate data on the boalth or enviremainted defender of the polluteit or other evidence adequate to support the perition. The Administrator may not deny a patition solely

on the table of hisdeouste recourses or time for review.

Filed: 10/25/2017

(H) The Administrator shall add a substance to the like upon a showing by Six petitioner or on the Administrator's own determination that the subscance is an air pollucant and that emassions, sunblent concentrations, accumulation of deposition of the substance are known to cause or may reasonably be autimps, and to cause subscribe official to human health thadverse environmental effects.

(C) The Administrator shall delete a substance from the list upon a showing by the petirioner or on the Administrator's own deraymination that there is adequate date on the health and environmental effects of the substance to determine that emissions, ambsent concentracions, bioreccumulation or depostates. of the substance may not reasonably be anticipared to cause any adversa effects to the tellatine unione schedule to differe manuer riecta.

dD) The Administrator shall delete one or more difficult security authorities that contain a listed hazardous air pulluannt not having n CAS number (other than colle even emissions, mineral filters, or polycyclic organic matter) upon a anowing by size petisioner or on the Administrator's over determination that auch edi metho delli scoretedus indmedo sopino named chemical of such listed hazardous atr pollutant most the deletion confirements of subparagraph: (C) The Administrator must -org of noing notified entirely a gueb to during mulgalang any emission standards pursuant to subsection (d) of this section applicable to any sounce outegory or submategory of a listed hasardone air pollutant without a CAS number listed under subsection (b) of this section for which a delation perition has been filed within 12 months of November 15, 1990.

#### (4) Partition information.

If the Administrator desermines that infermation on the health or navigamental effects of a substance to not admittant to make a deternitraston required by this autection, the Administrator may use any authority available to the Administrator to acquire such information.

#### (5) Test methods

The Administrator may establish by rule. test investiges and other analytic procedures for monitoring and measuring emisosous, agobeent concentrations, deposition, and bioaccountlytion of hazardone air pollulants.

### (6) Prevention of significant deterioration

The provisions of park C of this schohapter (prevention of significant deterioration) shall not apply to pollutants helpd under this sectaon.

#### (7) Legal

The Administrator may not list elemental lead as a hazardous air pollutesit under this andssection.

#### (c) List of source categories

#### (t) In general

Not fater than 12 months after November 15, 1990. the Administrator shall publish, and

Pfer in original. Probably should be "effects".

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shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to pablic comment or new information, a list of all categories and attracts ofted under paragraph (9) of the zer pollutants heted under paragraph (9) of the zer pollutants heted pursuant to suffection (f) of this section. To the extent practicable, the categories and subscategories listed under this subsection shall be consistent with the list of source categories established paracosal no section 1411 of this tasts and part C of this subscaptor. Nothing in the presceing sentence limits the Administrator's authority to establish solvatagories under this section, as appropriate.

#### (8) Requirement for amissions standards

Por the categories and subcatagories the Administrator lists, the Administrator shall astablish emissions attaidants under subscutting) of this section, amording to the subscutting the subscutting and subsantian (e) of this section.

#### (8) Arke sources

The Administrator shall list under this subsection each category or scheategory of area sugrous which the Abothistostas finds presouth a threat of Adverse effects to human health or the environment (by each sommer lifdividually or in the aggregate; warraulting (epmatten under this section. The Admin Strator shall, not later then 5 years often November (6, 1990, and pursuant to subsection (k)(3)(3) of this scotton, het, based on actual or estimated aggregate emissions of a ):shot pollutant or pollutants, sufficient categories or subcategories of area scurces so ensure that area sources representing 90 percent of the siece source emissions of the 30 hozzodous വാസ്വാധിintacts that present the greatest threat to public health in the largest number of schau armas are subject on regulation under this sex-Mon. Such regulations shall be promnigated ngt faren chan til gears after November 16, 1990.

#### (4) Previously regulated categories

The Administrator may, in the Administrator's discretion, list any category or subnategory of sources proviously regulated under this section as in effect before November 15, 1996.

#### (6) Additional exceptries

In addition to those categories and subowlegofies of sources distant for regulation pursanct to paragraphs (1) and (3), the Administrator may ut may tome list additional cutegories and anheategories of sources of bazard ous air polletanta according to the same oriterra for lasting applicable under such paragraphs. In the case of source categorica and subparegories listed eiter publications of the Julitial Mat required under paragraph (t) or (8), emission ataličania kiiden sobesction (đ) of chis section for the entopory or subtategory shall he promutgated within 10 years after Movem ber 15, 1990, or within 2 years after the date on which such extegory or subcategory is listed, whichever is later.

#### (6) Specific pollutants

With respect to alltylated lead compounds, polycyclic organic matter, hexachlorobanzane,

mercary, polychlorinated hiphenyls taturachlorodibenzonarana and 2,3.7.3-tetraehiprodibensa-p-dioxaa, thr Administrator sleel, not later than 5 years after November 15 1990, list categories and subcutagories of sources maduring that sources accounting for not less than 90 per control of the aggregate emissions of each such pollutanic are single-buto to (4)(b) or (3)(f) noticeedus refine afrabata this section. Such scandards shall be promutgated not later than 10 years after November 35, 1890, Title paragraph whall not be construed to require the Administrator to promulgate star/lepte for each pull-tants emitted by aloctine utility steam generating units.

#### (7) Reacceach feeilities

The Administrator shall establish a separate category covering insearch or taboratory facilities, as necessary to assure the equivable treatment of such facilities. For purposes of this section. Tresearch or laboratory facility means any stationary course whose primary purpose is or conduct research and development into new processes and products, where such source is operated under the close supervision of technically theirod personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

#### (8) Bost manufacturing

When establishing emissions standards for attrant, the Administrator shall list host manufacturing as a separate subcategory unless the Administrator limbs that each listing would be inconcision; with the grais and requirements of this chapter.

#### (8) Deletions from the list

- (A) Where the sale reason for the Inclusion of a service estagory on the list propined under this subsection is the excission of a ranique chemical substance, the Administrator shall delete the source category from the list is appropriate because of action taken under entire, subjurgatephs (C) or (T) of subsection (bits) of this section
- (B) The Administrator may delete any source nategory from the list under this subsection, on patiolon of any person or on the Administrator's own motion, whenever the Administrator makes the following determinations or determinations as applicable:
  - (b) In the case of basatious air pollutants emitted by sources in the category that may result in carrier in burnans, a determination that no source in the entegory (or group of sources in the case of area sources) emits such basardons air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source for group of sucres in the case of area sources!.
  - (ti) In the case of tazardous air pollutants that may result in adverse licalth effects in humans other than cancer or adverse subtrainedtal effects, a determination that emissions from no source in the category or subtrategory opposited (or group of sources)

TITLE 42-THE PHOLIC HEALTH AND WELFARD

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in the twee of area sources) exceed a level which is adequate to protect public health with an ample matgin of safety and to adverse environmental effect with result from any source for from a group of sources in the case of area sources).

The Administrator shall grant or deny a petation under this paragraph within I year after the petition is filed.

#### (d) Ryminaino atandèrda

#### (1) In general

The Administrator shall promptists regulations establishing emission standards for each category of subcategory of major sources and area bottoes of instantous are pollulated instead for regulation preshant to subscenor. (c) of this section in accordance with the schedules provided in accordance with the schedules provided in accordance may distinguish among classes, types, and sises of sources within a category of spheategory in establishing such standards entept that, there shall be no delay in the compliance date (of any standard applicable to any source under subscettion (c) of this section as the result of the authority provided by this sentence.

#### (2) Standards and seethods

Englisgions etandards prompligated under this subsection and applicable to naw or existing sturces of hisardous air pollutants Shall Yenumber the enactmuch degree of reduction in emissions of the hoxardone air pollutionts sob-Ject to tide section (moluding a prohibition on such emissions, where achievable) that the Adminiacrates, taking inco consideration the cost of achteving such emission reduction, and any non-ale quality health and environmental impacts and onergy requirements, determines Is actionable for new or existing acurces in the category or subnategory on which such enussjon szenderd epplies, bbrough application of (misasiones, procesaes, mestidas, ayeleme un techniques implicating, but not inmitted to, measures which--

- (A) reduce the volume of, or eliminate emissions of, such pollutants through procses changes, substitution of metarizts or other modifications,
- (B) encluse systems or processes to eliminate emissions.
- (C) collect, capture or treat such pollut sats when released from a process, stank, storage or highlive amissions point.
- (D) are design, equipment, work practice, or operational shandards (including requirements for operator training or conditional) as provided in subsection (h) of this section,
- (F) and a combination of the above.

None of the measures described in subgata graphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way complomise any United States paired or United States tradement right, or any confidential business information, or any trade sector or any other intellectual property right.

#### (3) New and existing sounces

The maximum degree of reduction in omisstons than is deemed achievable for new courses in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar spaces, as decermined by the administrator. Emission standards promaigated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be tess stringent, and may be more stringent than—

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- (A) the average emission limitation achieved by she best performing 12 percent of the existing enurces (for which the Administrator bas emissions (n/comexion), evchalling those sources that have, within (8 months before the emission standard is proposed or within 30 mosths before such staticand is promotigated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply it the source is not subject to saak etanderd, with the lowest apprevable emission rate (as defined by section 7501 of this title) applicable to the source exceptry and prevailing at the time, in the category or subcategory for categories and subcategories with 80 or more saurces, ar
- (8) The average emission limitation schicked by the best performing 5 sources for which the Administrator has or could reasonably obtain emissions information) in the extegory or subcattracty for categories or subcategories with fewer than 30 sources.

#### (4) Health threshold

a chilly not standard to cooken the Additional the Additional the Additional the Additional the Additional three standards are the cooking and the cooking and

#### (ii) Alternative standard for area sources

With respect only to entegories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in free of the authorities provided to paragraph (2) and subsection (f) of this section, elect to prompligate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control bechnologies or managements practices by such sources to reduce emissions of largardous sir pollutants.

#### (0) Review and revisions

The Administrator shall review, and revise as necessary clashing into account developments in practices, processes, and control technologies; emission standards promalgated under this section no less often than every byears

#### (7) Other requirements preserved

No emission spandard or other requirement promiligated under this section shall be interpreted, constitued or applied to diminish or replace the requirements of a more strongent emission limitation or other applicable requirement established personal to section 7411 of this title, burt C or D of Unia subchapter, or

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other authority of this chapter or a standard usued ander State authority

#### (B) Coke avens

(A) Not inter than December 31, 1992, the Administrator small promulgate revulations establishing emission standards coller paragraphs (2) and (3) of this subsection for colle even batternes, in establishing such standards, the Administrator shall evaluate.

(I) this use of sodium alloate (or squivalent) lating compound- to prevent door leading and other operating practices and technologies for their offsectionness in reducing cake oven emissions, and their suitability for use on new and existing coke even batteries, taking into account costs and reasonable commercial loss warpanties; and

In) as a basis for emission standards under this subsection for new code order intercles that bogin constitution after the date of proposal of such standards the dawell design Thompson non-recovery code oven hatterles and other nun-recovery code oven technologies, and other appropriate emission control and code production scalinglings, as to their effectiveness in reducing code oven temissions and their espability for production of steel maility code.

Such regulations shall require at a minimum that coke over hathrens will not exceed H per centum leaking flore. I per centum, leaking flos, a per centum leaking offtakes, and 18 sections wishing emissions per charge, with no exclusion for emissions during the period after the charing of self-scaling over doors. Notwithstanding subsection (1) of this section, the compliance date for such emission standards for existing order over hatharies shall be December 31, 1905.

(B) The Administrator shall promulgate work practice regulations under this subsection for note even between requiring, an appropriate—

(1) the use of softum silicate for equivalent) taking compounds of the Administrator determines that use of soducm silicate is an effective means of emissions control and in schievable, taking into executive side and reasonable commercial wergenties for those and related equipment; and

iii) door and jam cleaning practices.

Notwithstanding materiation (1) of this section, the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after November 15, 1990

(C) For coke oven latteries electing to qualify for an extension of the compliance date for standards promulgated under subsoction (f) of this section in accordance with subsoction (f) of this section in accordance with subsoction this of this section, the emission standards ender this subsoction for opin over batteries shall require that coke oven batteries not exceed 6 per centum leaking \$600s. ) per centum leaking hids, 5 per centum leaking offitales, and 16 seconds visible equasions during the period after the closing of self-scaling drops.

Notwinhstanding subsection (i) of this section, the Schaplinace date for such emission standards for existing coke over harteries secking an excession shall be not later that, the date 5 years after November 15, 1990.

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#### (8) Sources licensed by the Nuclear Regulatory Commission

No standard for radiotechide emizacous Perc any category or subcategory of facilities in ceneed by the Nuclear Regulatory Commission (or all Agreement State) is required to be premulgated under this section of the Administistor determines, by role, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Emergy Act (42 C.S.C. 2011 et seq. for such category or subcategory provides an ample margin of safety to protect sha public health. Nothing in this setsection shall premiude or deny the right of any State or political aubdivision therauf to adopt or enforce any standard or limitation respecting emisstons of radiomicities which is representaging than the standard or limitation in wilect auder section 7411 of this title or this section.

#### (10) Effective dute

Emussion standards or other regulations promulgated under this subsection shall be offective upon promulgation

#### (c) Schedele for standards and review

#### (1) In general

The Administrator shall promulgate regulations establishing emission standards for catsgories and subcategories of sources initially fisted for regulation pursuant to ambsection (OXI) of thus section as expeditionally as practicable, assuring that

(A) emission standards for not less than 40 categories and 2xt-categories (not counting coke oven batteries) 2null be primulgated not lacer than 2 years after November 16, 1990.

(B) smission standards for take oven batteries shall be promulgated not later than December 31, 1988;

(C) emission standards for 25 per contum of the Hased exceptein and subcategories shall be promotested not later than 4 years after November 15, 1980;

(D) emission standards for an additional 25 per contum of the listed calogories and sub-categories shall be premulgated not later than 7 years after Nevember 15, 1990; and

 $(\mathbb{R})$  smission assumings for all categories and sold-algories shall be promobated not later than 10 years after November 15, 1990.

#### (2) Priorities

In desermining priorities for promulgating standards under subsection (d) of this section, the Administrator shall consider—

 (A) the known or anticipated adverse affacts of such politicants on public health and the environment;

(B) the quantity and focation of sinistions or reasonably anticipated emissions of basardoss air polisitants that each category (a subcategory will smit and

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(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

#### (8) Published schedule

Not later than 24 months after November 15. 1990, and after opportunity for consuent. the Administrator shall publish a scholole estatlishing a date for the promutgation of enusgion standards for each category and subcategory of sources listed pursuant to subsaction lever and (3) of this section which shall to consistent with the requirements of paragraphs (1) and (2). The determination of priorities for the promptgation of standars pursuant to this palagraph is not a relembling and stall not be subject to judicial review, except stat, tailure to promulgate any slandard pursugant to the settedule established by this pacingraph shall be subject to review under section 7804 of this citie

#### (4) dodiniel zaview

Notwithstanding section 76(f) of this table, no action of the Administrator addit g a pollation on the list under subsection (b) of this section or histing a source category or subcategory under subsaccions (c) of this section shall be a timal agency action spoiect to judicial review, enough that any such action may be reviewed under such section 76(f) of this title when the Administrator issues emission standards for such polintant or category

#### (5) Publicly owned treatment works

The Administrator shall promotests statished processes to subsection (d) of this section applicable to publicly owned prestrains works as defined in title II of the Federal Water Pollution Control Act [3, U.S.C. 1281 et seq.]) not later than 5 years after November 15, 1956.

#### (f) Standard to protect besith and environment

#### (III Kvajert

Not later blan it years after November 15, 1990, the Administrator shall investigate and report, after consulvation with the Surpeon George and after opportunity for public comment, to Googless on—

(A) methods of calculating the rick to posize health remaining, or likely to remain, from sources subject to regulation under this section after the application in standards under subsection (d) of the section.

(B) the public health significance of such estimated remaining tink and the technologically and commercially available metheds and costs of reducing such cisks.

(C) the actual health effects with Paspect of persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any numerialities in Plak sassament methodology or other health sassament technique, and any negative health or approprimental consequences to the community of efforts to reduce such class, and

(D) recommendations as to legislation regarding such remaining risk.

#### (2) Emission standards

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(A) If Dongress does not set on any reconmendation submitted under paragraph (11. the Administrator shall, within 8 years after promulgation of standards for each category or sabeategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standarde is regulated in order to provide an ample margin of safety to prosect pub-He bealth in accordance with this section (as In offset before November 13, 1990) at an provent, taking into constituention costs, energy, safety, and other relevant factors, an adverse environmental effect. Subssion attinuates promulgatod under this subsection shall provide an ample marghr of safety to protect public health in accordance with this section (as in effect balare November 12, 1930), unless the Administrator determines that a more strongent standard is necessary to prevent, salmag into consideration contagenergy, safety, and other resevant factors, an adverse environmental effest. If standards promulgated pursuant to subsection (d) of this section and applicable to a category or subcatesory of approasi emitting pollutant (or pollutants) classified as a knawa, probable ar possible human careinogen. do not reduce lifetime excess cancer make to the Individual most exposed so emissions from a source in the category or subcategory to less. than one in one million, the Administrator shall promulgate atandards under this subaeotsen for auch sounce datagety

(B) Nothing in subparegraph (A) or in any other provision of this sociiot, shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before November 15, 1999, and sol forth in the Federal Register of September 14, 1969 (b) Federal Register 300s).

(C) The Administrator shall determine whether or not to promulgate such standards and if the Administrator decides to promulgate such standards, shall promutgate the standards & years after promulgation of the standards under subsection (d) of this section for each source category or subcategory conremail. In the case of categories or auticategories for which standards under subed Ca Serioues are moisses said to (d) italiana promulgated within 2 years after November 18, 1998, the Administrator shall have 9 years after promidigation of the standards under subsection (d) of this section to make the determinution under the preceding sentence and, if required, to promulyate the standards ander this paragraph.

#### (8) Effective date

Any emission standard established phresent to this subsection shall become effective upon promulgation.

#### (4) Probibition

No air pollurant to which a standard under this subsection applies may be emitted from any statuously source to violation of such standard, except that in the case of an existing source.

 (A) such etablished shall not apply until 90 days after its effective data, and

(B) the Administrator may grant a waiver parmitting such source a period of up to 2 years after the effective date of a standard to comply with the standard if the Administrator finds that such period is assessary for the installation or controls and that steps will be taken during the period of the waiver to assure that the health of persons will be apprecised from immunes endangerment.

#### (5) Area sources

The Administrator shall not be required to conduct any review under this subsection or prompligate emission limitations under this subsection for any enterprise or subcategory of separation for the same of pursuant to subsection (0x3) of this section and for which an emission (0x3) of this section and for which a emission standard is prompligated pursuant to subsection (d)(5) of this section.

#### (6) Unique obsessioni substances

In establishing standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish such standards with respect to the builth and environmental effects of the Substances actually emitted by sources and direct transfermation bypondates of such emissions in the categories and anterestics in the categories and anterestics.

#### (g) Blodiffeetions

#### (III (Mfeets

(A) A physical change to, or change to the method of operation of, a major source which results in a greater than do minimis increase in social emissions of a hazardous air pollutand shall not be considered a modification, if such increase in the quantity of actual emisstons ni any hazardous ale podutanti from auchsource will be offere by an equal or greater depresse in the quantity of smitsions of another hazardous are pollutant for pollutants) from such source which is deemed more basedous. pursuant to guidance trained by the Adictivistrator under sunparagraph (8). The owner to spectator of such sacree shall minimit a showing to the Administrator (or the State) that such increase bod bean offset under the preceding scatence.

(B) The Adiababatistor shall, after notice and opportunity for comment and not later than IR months after November 15, 1990, publigh guidance with respect to implementation of this subsection. Buch goldsmee shall include an identification, to the extent practicable, of the relative negard to human health resulting from envisalings to the amblent att of each of the pollutarus Hated under subsection (h) of this section sufficient to Sabilitate the offset showing authorized by subparagraph (A) Such graidsince shall not authorize elifets between pollutants where the increased pollutant for more than one pallutant in a scream of pallutnnial causes adverse effects to burnet health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutans(s).

## (2) Construction, reconstruction and modifica-

(A) After the effective date of a permit program under subobapter V of this chapter in any State he person hisy modify a mision source of hazardous air pollutants in such State, unless the Administrator for the State, determines that the maximum achievable control technology emission limits stan under this section for existing corress will be mot. Such determination shall be made on a case-by-case hade where he applicable emissions limitations have been established by the Administration

(E) After the effective date of a permit program under subchapter V of this chapter in any State, no person may construct or reconstruct any major source of baserious als publicants, unless the Administrator for the State) determines that the maximum achievable control trohnology emission limitation under this service for new sources will be met Such determination shall be hadde on a case-by-case basts where no applicable emission limitations have been established by the Administrator.

#### (3) Presidence for modifications

The Administrator (or the State) shall establish resecuable procedures for asserting that the requirements applying to modifications under this section are reflected in the permit.

## (b) Wark practice standards and other requirements

#### (1) In general,

For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a bazardous also pollubant or pollubants, the Administrator may, in lieu thorsof, promolgate a design, equipment, work practhes, or operational standard, or combination theroof. Which la the Administrator's Judgment is ounsistent with the provisions of subsection (d) or (I) of this section. In the event the Administrator promulgates a design or equipment standard under this subsection, the Administration shall include as part of such arabdard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

#### (2) Definition

For the purpose of this subsection, the phrase "not levelble to prescribe or enforce an emission standard" means any situation in which the Administrator determines that—

(A) a hexardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pullutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal. State or local law, or

 (B) the application of measurement meticodology to a particular class of sources is not practicable due to technological and economic limitations.

#### (3) Alternative standard

If after notice and opportunity for comment, the owner or operator of any source cetablishes to the satisfaction of the Administrator that an alternative means of emission limits.

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tion will achieve a reduction in embatchs of any air pollurant at least equivalent to the reduction in embasons of such pollutant achieved under the requirements of paragraph (1), the Admististrator shall perful the ose of such alternative by the source for purposes of compitance with this section with respect to such pollutant.

#### (4) Numerical standard required

Any scandard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it is tensible to promolyate and author a standard in such terms.

#### (i) Schedule for compliance

## Preconstruction and operating requirements

After the effective date of any emission standard, himisation, or regulation under subsection (d), (f) or (h) of this socialism, to persuit may nearly existing major source subject to such emission standard, regulation or limitation unless the Administrator (or a State with a permit program supressed under subchapter V of this chapter) determines that such source, if properly constructed, Yeconstructed and operated, will comply with the standard, regulation or limitation.

#### (2) Special rule

Notwithsuzading the requirements of paragraph (1), a new space which commences construction or recommences; and himtabout or regulation applicable to such source is proposed and before each extended, limitation or regulation is promulgated shad shad not, by required to comply with such promulgated standard dutil the date 3 years after the date of promulgation if—

(A) the promelgated standard, limitation or regulation is more stringent than the standard, limitation of regulation proposed; and

(B) the source complies with the stability Syntation, or regulation as proposed during the 3-year period transdictely after promulgation.

#### (3) Compliance schedule for existing sources

(A) After the effective date of any amissions standard, limitables or regulation probably attack made this section and applicable to a soarce, no poison may operate each source in violation of sections standard, limitation or regulation except. In the case of an emission source, the administrator shall establish a complaintee date or dates for each category or suboptegory of existing sources, which shall provide for compliance as oppositionally as practicable, but to overtime their their Systematic offerive date or such standard, except as provided in subparagraph (A) and paragraphs (4) through (B)

(É) The Administrator for a State with a program approved under satisfiable. V of this chapters may issue a perceit that practs an extension permitting an existing source up to I additional year to comply with standards under subsection (d) of this saction if such at Cirional pariod to recessary for the instabilational pariod to recessary for the instabilation.

tank of controls. An additional extension of opto 3 years may be added for mining waste operations. If the 4-year compliance time is in sufficient to dry and erver mining waste in order to reduce embesions of any pollutant listed cities subsection (a) of this section.

#### (4) Presidential exemption

The President may example any stationary source from compilance with any standard of limitation under this another for a period of not more than I years I( the President determines that her becomings to implement such standard is not available and that it is in the national security inserests of the United States to do 20. An exemption under this naragraph may be extended for I or more additional periods, each period out to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

#### (5) Early reduction

(A) The Administrator (or a State acting pursuant to a permit program approved under and a sussi Heile (resignity cittle) V haliqaffoldus aut allowing an axiating governor, for wideh the owner or operator demonstrates that the scarce has additived a reduction of 90 per conturn or more in emissions of hazardous attractlighants (% per contains in the case of biggerdous etr polintants which are particulares) from the eparce, to mech an attornative engineton handtation reflecting such reduction in item of an emission limitation promutgated under submeetlam (d) of this meetion for a period of B years from the compliance date for the otherwise applicable stundard, provided that such -qui salwraillo effa esolad bavanium al nottonbar plicable standard under schrectling (d) of this accition is first proposed. Nothing in this pagegraph shall preclude a State from conditing residu où bellicega esodi lo sasove ol anolloub subparegraph as a condition of granting the

extension authorized by the provious sentence.

(R) An existing source which achieves the reduction reformed to in subparing and IA after the proposal of an applicable scandard but be fore January 1, 1994, may qualify under subgatespace (A). If the source makes an enforce-able commisment to achieve such reflection the proposal of the standard. Such commisment shall be enforceable to the same extent as a regulation under this section.

(C) The reduction shall be determined with respect to vertitable and natural emissions in a base year not earlier than calendar year 1981, provided that, there is no evidence that emissions in the tase year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The administrator may allow a source to use a baseline year of 1905 or 1986 provided that the source can deministrate to the satisfaction of the administrator that emissions data for the source reflects verifiable data hased on information for each source. People of the Administrator prior to November 15, 1960, puckment to an information request issued under section 741s of this bible.

(D) For each source granted an alternative sodes (ale paregraph

there shall be established by a permit issued pursuant to subchapter V of this chapter an enforceable emission limitation for Essardous air pollutants reflecting the reduction which qualifies the source for an alternative ordssion Routation under this paragraph. As alternative emission (imitation under this paragraph shall not be available with mepont to standards or requirementa promulgated pursuant to subsection (D) of this section and the Administrator shall, for the purpose of determining whether a standard under subsection (D) of this section is peressent, review omis-Avidance from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the cabegory of autoatagory are reviewed.

(R) With respect to pollutants for which high risks of adverse public health effects may be associated with engouve to small quantities including, but not limited to, chlorinated director and finants, the Administrator shall by regulation. Hinto the use of affecting reductions in emissions of other hazardous are politically from the source as counting toward the 80 per centum reduction in such high-risk politicants qualifying for an alternative emissions firstlation under this paragraph.

#### (6) Other reductions

Notwithsranding the requirements of this section, no existing source that has installed—

 (A) heat available control technology (up defined to section 7479(2) of this sitte) on

(B) technology required to meet a lowest subtrackly emission tube (sa defined in sec 100, 780) of this title).

prior to the promutgation of a standard under this pection applicable to such source and the same pollutant; our scream of pollutants) controlled payagent to an action described in subparagraph (A) or (B) shall be required to comply with such standard under this section apply the date 3 years after the date on which such installation or reduction has been anneved, as determined by the Administrator. The Administrator may issue such rules and suidence as are necessary to implement this pursurable.

#### (7) Extension for new sources

A source for Which construction or reconstruction is considered after the date an emission standard applicable to take a transition and applicable to take a transition but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) of this section shall not be required to comply with the emission standard under subsection (f) of this section until the date in years after the date construction or reconstruction is commenced.

#### (A) Coke ovens

(A) Any coke even hattery that complies with the emission limitations established under subsection (defect of this section, cohparagraph (B), and subparagraph (C), and complies with the provisions of subparagraph (E), shall not be required to achieve emission limitations promulgated under anisoction (f) of this section units January I, 2020.

(f)(t) Not later than December St. 1982, the Administrator shall promisions emissions from cake over emissions from cake over emissions from cake over instanting paragraph (8) of this subsection, the complishes date for such emission (imitabless for calating code over harteries shall be January 1, 1998 Such emission limitations shall reflect the lowest schievable emission rate as defined in section 190) of this title for a roke over battery that is rebuilt or a replacement of a coke over plant for an existion thattery. Such emission Himitations shall be at less stringent than—

(I) Ripper constant leaking doors (5 per rentum leaking doors (or sommeter betverles):

(II) I per centum leaking Pas:

(ΠΩ 4 per centom leaking off-akee; and (IV) 16 seconds, visible omlesions per charge.

with an exclusion for emissions during the paried after the closing of salf-seafing oven drops kor the total mass emissions equivalents. The erdensakbig in which such emission Emissitions are promulgated shall also estublish an appropriate measurement methodology for determining compliance with such conteston line-Hambors, and Shai) estabileh such emuseson Himitations in terms of an equivalent level of mass emissions reduction from a celte oven baltery, unless the Ademonstrator finds that such a mass emissions standard would not be gracticable or enforceable. Such measurement inethodology, to the extent it measures teatring duors, shall sake into consideration afternablive best mothods that reflect the host sechnotogy and practices acrostly applied to the affected undustries, and shall assure shat the final took methods are consistent with the per-formance of such best technology and prac-

III) If the Administrator (alls to promulgate such omession Profestions under this subparagraph prior to the effective date of such emission limitations, the emission Himitations applicable to both owns basicines under this subparagraph shall be—

(i) A per centum leaking doors is per centurn leaking doors for six moter batteries;

(II) ? per pentura teaking lide:

(210) tiper centum teaking offtakes, and

 (IV) 16 seconds visible entiretions per charge.

or the total mass emissions equivalent (( the total mass emissions equivalent is determined to be practicable and enforceable), with no exclusion for emissions during the period after the closing of scienceabling over doors.

(C) Not later than Jamaey 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and tevise, as necessary, such emission finitations at reflect the lowest achievable emission finitations as Admant in section 750 of this title at the sime for a coke oven battery that is rebettly on a repletement at a coke oven plant for an existing battery. Such emission limitations shall be to less stringent than the emission limitation promulgated under subparagraph (B) Notwithstanding paragraph (2) of this subsection, the compliance date for seed emission.

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ilmstations for existing coke oven batterbss shail be Japhery I, 2008.

(D) At any time prior to January 1, 1998, the awaer or operator of any cake oven batters may elect to comply with emission limitations promutgated under subsection (f) of this secrion by the date such emission limitations would otherwise apply to such cake oven battery, by Hee of the emission limitations and the compliance dates provided under startus-graphs (B) and (C) at this persyrable Ady 9000 of throod vilage) and lights recognised to receive pureply with such emission limitation's proinvigated wilder withsection (f) of this section. with respect to such some even buttery as ut-January J. 2003. If no such emission lumiss. tions have been promulgated for such colte oven battery, the Administrator sign) promulgate such emission limitations in Novicelands with subsection (t) of this section for such goka oven bactery

(R) Coke even batteries qualifying for an extension under subparagraph (A) shall make available not late; than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator on determine the appropriate level of any emission standard established by the Administrator pursuant to subsection (I) of this section.

(F) Notwickstanding the provisions of this section, parametrication of any source of coke over smissions qualifying for an extension under this paragraph shall not subject such source to emission limitations wides each those established under subparagraphs (H! and (O) with January 1, 2020 For the parameter of this subparagraph. Shaltern "resolutionardion" includes the replacement of existing toke over battery expected with new coke over batteres or comparative or lower sapacity and lower solutional emissions.

## (j) Equivalent emission limitation by permit. (i) Effective date

The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to subchapter V of this chapter in such State, but not prior to the date 42 months after November 15, 1990.

#### (2) Failors to promoigate a standard

In the event that the Administrator falls to promitigate a standard for a category or substategory of major sources by the date established pursuant to subsection (e)(); and (f) of this section, and beginning 18 months after such date that not proof to the effective date of a permit program sudst subchapter V of this chapter), the owner or operator of any major source in such sategory or subsategory shall submit a permit application under paragraph (5) and such owner or operator shall also comply with maragraphs (6) and (6).

#### (8) Applications

By the data established by paragraph (2), the owner or operator of a major source sobject to this subsection shall file an application for a permit if the owner or operator of a source

has submitted a timely and complete application for a permit required by this subscettion any failure to have a permit shall not be a vigilation of paragraph (2), onless the delay in final action is due to the failure of the applicant to timely extend information required or requested to process the application. The Administrator shall not later than 18 months after November 15, 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a bimely manner the completeness of applications.

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#### (4) Review and approval

Permit applications submissed under this enhancetion shall be reviewed and approved or disapproved excitor 765id of this title. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 headths to revise the application to meet the objections of the Administrator (or the State).

#### (5) Emission theitation

The partill shall be issued pursuant to sub-chapter V of this chapter and shall consain emission limitations for the hazarious air pollutents subject to regulation under this secsion and emitted by the source that the Admentetratur (or the State) determines, on a case-by case basis, to be equivalent to the limseation that would apply to such source if an emission standard had been promutgated in a timely innumer under authection (d) of this section In the alternative, if the applicable existents are mes, the permit may opatain an antissions limitation established according to the provisions of subscotled (1)(5) of this section. For piziposes of the precedity sentence. the reduction required by subsection  $(1)(\delta)(A)$ of this scotion shall be achieved by the date on which the relevant standard should have been promalgated hader schematon (d) of this eection. Me such peliciant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditionally as practicable, but her larer than the date 3 years after the done to secrete gradulary for becase of democ other compliance date as would apply under subsection (I) of this section.

#### (6) Applicability of subsequent standards

If the Administrator promulgates an emission standard that is applicable to the major source prior to the face on which a permit application is approved, the emission imittation in the permit shall reflect the promulgated standard cather than the emission limitation determined pursuant to peragraph (5), provided that the source shall lawe the complication pertiod provided under subsection (i) of this section. If the Administrator promulgates a standard under subsection (d) of this section that would be applicable to the source in flew of the amission limitation established by permit under this subsection after the date on which the permit has been issued, the Administrate.

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instrator for the State; shall revise each permit upon the next renewal to reflect the standard granulogated by the Administrator providing each search a reasonable time to comply, but no larger than 8 years after such standard is promotigated or 8 years after the date on which the source is trust required to comply with the instance limitation established by paragraph (b), whichever is earlier

#### (k) Arca source program

#### (1) Findings and purpose

The Hongress finds this termissions of Justandour air gollutents from area scences may fishvidually, or in the aggregate, present againcant risks to profite health in cross at sas Considering the large number of persons exposed and the risks of carresugents and other anverse health effects from hazardous air pollutante, ambleet concentrations characteristhe of large erham areas should be reduced to levels substantially below these correctly expersenced. It is the purpose of title attraction to noticeve a substantial reduction in emissigns of hasardana bir polintants from area. sources and an equivalent reduction to the public health risks associated with such sources including a reduction of not less than To per contain, in this flictdense of dancer attrill a fable to emissions from such sonrces.

#### (3) Research prograws

The Administrator shall after commitation with State and local air pollution control officials, conduct a program of research with respect to sources of hazabdous air publicants in upon areas and shall include within such program—

(A) ambient monitoring for a broad range of inzardous air pollutants (including, but not limited to, volable organic compounds, metals, pesticides and products of incomgleto combustion) to a representative comber of lither locations.

(F) analysis to obstacted as the antro-a of such pollution with a focus on used arraves and the contribution that such sources make to public thaifth risks from hazardous are pollutionts, and

(C) consideration of atmospheric meansformation and other factors which can elevate public health make from such pollutants.

Health effects considered under this program shall become, but not be limited to, cardinogenicity, nutweeticity, retratogenicity, neurotaxicity, reproductive designation and other acute and chronic effects including the role of such pollutants as precursors of came or acid series formation. The Administrator thall report the petitionary results of such research not later than 3 years after November 15, 1860.

### (8) National sources

(A) Considering information collected pursuant to the ministering program authorized by paragraph (2), the Administrator shall, not later than 5 years after November 15, 1961, and after notice and opportunity for public coment, prepare and transmit to the Congress a comprehensive strategy or control emissions

of hazardous air politicants from area sources in droan areas.

(B) The estategy shall-

(1) then his not less than 30 hazardous air pollutants which, as the result of amissions from area sources, prosent the greatest threat to public health in the largest number of urban areas and that are or will be taked pursuant to subsection (b) of this section, and

(ii) Menth'y the source maneyorles of anticategories contituing such policiants that are or will be listed pursuant to subsection to of this section. When iteratifying categories and subcategories of sources under this subparagraph, the Administrator shall assure that sources accounting for 90 per contism of more of the aggregate emissions of each of the 30 identified burardous air policiants are sobject to standards pursuant to subsection (d) of this section.

(C) The strategy also]] (noteds a schedule of specific actions to substantially reduce that public health make posed by the release of heaardous air pollutages from area sources that will be implemented by the Administrator under the authority of this or other laws inclading, but not timited to, the fuxes Substances Control Act [56 C.S.C. 2861 et.son.], the Federal Insections, Fungición and Robenticula Act II U.S.C. 138 et esq.] and the Reserves Conservation and Recovery Act (62 U.S.C. 690. at seq. b or by the States. The strategy slick achieve a reduction in the incidense of exceed attributable to expresse to hazardous air pullinants emitted by stationany southes of not less than 75 per centum. collabletting control of emissions of hazardous air policiants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

(12) The strategy may also identify remarch meds in monitoring, analytical methodology modelling or pollution control techniques and recommendations for changes in law that would further the goals and objectives of this subsection.

(E) Nothing in this subsection shall be interpreted to preclude at delay implementation of notions with respect to area sources of hazzinous air pollutants upday consideration possesses to this or any other law will that may be seemed multiplied before the sourcest is precised.

promulgated before the strategy is propared.

(F) The Administrator shall implement the strategy as expeditionally as practicable assuring that all sources are in compliance with all equations must be later than 9 years after betweenter (\$ 1980).

(G) As part of such strategy the Administrator shall provide for ambleon monitoring and emileton modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

#### 14) Areamide activities

in addition to the national urban air noxics strategy authorized by paragraph (3), the Administrator fizit also encourage and support areasance strategies developed by State or local air publishing control agencies that are

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intended to reduce make from emissions by area someon within a particular urban area. From the funds abalishlo for greats under this section, the Administrator shall set while not lear than 10 per centum to support arounded slowlegies addressing becausions air pollutants emitted by area sources and shall award such tunds on a demonstration basis to those States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall propure guidelines for control technologies or management practices which may be applicable to springs categories or subsategories of area sources.

#### 15: Beport

The Administrator shall report to the Congress at intervals not later than 8 and 12 years after November 15, 1990, no actions taken under this subsection and other parts of this chapter to reduce the risk to public health posed by the release of basardous air pullet sits from sees sources. The reports shall also identify specific metropolitan areas than continue to experience high risks to public health as the result of emissions from area sources.

#### (i) liteta programa

#### (I) Iti general

Mach State may develop and submit to the Administrator for approval a program for the in plementation and enforcement (including a review of enforcement desegations previously granted) of emission standards and other requirements too air pollulants subject to this saction or requirements for the prevention and mittigation of accidence) releases paramet to subsection (r) of this section. A program submilitad by a Brate under this management may privide for partial or complete delegation of the Administrator's authorities and responandiazimo porchio bim Unionoigini ut astilibia standards and prevention reguliements but shall not include authority to set standards Jess organization than those promulgated by the Administrator under this chapter

#### (8) Guidance

Not leter than 18 months after November 15, 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The publiance shall also provide for the registration of all facilities producing processing, handling or storing any substance insted pursuant to subsection (r) of this section in amounts greater than the toreshold quantity. The Administrator shall include is to almost in such guidance an epsional program begun in 1988 for the review of high-risk paths sourcess of air pollutants including, but not thread to, hazardous air pollutants insent pursuant to subsection (b) of kills accrition.

#### (3) Technical assistance

The Administrator sitall establish and maintain an air toxics chearing boose and center to provide reclaimed information and assistance to State and local agencies and, on a cost recovery basis, to other on control reclaiming, liesable and ecological make assessment, make

analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section '400 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with auti-for profit organizations. The Administrator may conduct research on methods for preventing, measuring and constrolling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public

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#### (4) Grants

linon application of a State tile Adminis-Sta 500 neag maife grante, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for autimittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollumnts or oxtremely Cazardon substances other than those specifically subject to this section. Grants under Grie paragraph may include support (at high risk paint source review as provided in paragraph (3) and support for the doellerers to noitatremeigni bus transpley area source programs pursuant to subsection (k) of titls asotion.

#### (5) Approval or disapproval

Not later than 100 days after receiving a program sabmitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that

- (A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section:
- (B) adequate authority does not exist, or adequate resources are not available, to implement the program.
- (C) the schedule for implementing the program and assuring compliance by affected sources te dot sufficiently expeditions; or
- sources te not sufficiently expeditions; or (B) the program is otherwise not to compliance with the guidance beased by the Administrator under paragraph (2) or is not likely to satisfy. In whose or in part, the objectives of this chapter.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and results the proposed program for review and approval pursuant to the provisions of this subsection.

#### (6) Withdrawsk

Whenever the Administrator determinas, after public hearing, that a State is not all-ministuring and enforcing a program approved poyeaut to this subsection in accordance with

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the guidance published purement to paragraph (2) or the requirements of paragraph (3), the Administrator shall so notify the State and, if action which will assure prompt compliance to not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the teasors for withdraws, thall have been stated to writing and made public

#### (7) Authority to enforce

Nothing in this subsection shall prohibit the administrator from enforcing any applicable entirety; standard or requirement under this section.

#### (8) Local program

The Administrator may, after notice and opportunity for pubble outsment, approve a program (eveloped and submitted by a local air pullation control against (after consultation with the State) policianth to tills subsection and any such against implementing as approved program may take any nation authorized to be halten by a State under this section.

#### (9) Permit bulliocity

Nothing in this subsection shall affect the authorities and obligations of the Administrator or the Brate under subgrapter V of this chapter.

#### (a) Atmosphere deposition to Great Lakes and constal waters

#### (1) Deposition assessment

The Administrator, in conjectation with the Union Secretary of Commerce for Oceans and Administrate, that! conduct a program to identify and assess the extent of almosphere, chair status of lassessation of the Administrator, other air pollutants; to the Greek Lakes, the Chesapsake Ray Take Champlain and coastal waters. As part of such program. The Administrator shall—

(A) monitor the Great Lakes, the Glasspeaks Bay. Take Chamblain and constal waters. Including munitoring of the Great lakes through the monitoring natwork established parament to paragraph (2) of this subsection and designing and deploying an atmosphered monitoring network for coastal waters pursuant to paragraph (4);

(R) Investigate the sources and deposition tages of abmospheric reposition of air pollutions (and these atmospheric transfermation precursors);

(C) conduct research to develop and inprove monitoring methods and to discretize the relative contribution of atmospheric pollitants to total polintian localings to the Great Lakes, the Chesipeake Bay, Lake Champilein, and constal waters.

(D) evaluate any adverse officets to public health or the solvitohment caused by such deposition concluding effects resulting from indirect exposure pathways; and assess the contribution of such deposition to violations of water quality standards established pursupoint to the Peneral Water Pollintian Combred Act [33 U S.C. 1251 to seq.) and drinking

water Standards established pursuant to the Sate Drinking Water Act [42 H.S.C 300] et geq.j. and

(8) sample for such pollutable in block, fish, and wildlife of the Great Lakes, the Chesapeake Bay, bake Champlain and coastat waters and characterise the sources of such pollutable.

#### (2) Great Lakes monitoring network

The Administrator shall overese, in accordance with Amera 15 of the Great Lakes Water Quality Agreement, the establishment and operation of a Great Lakes atmospheric denosition network to monitor almospheric deposition of barardous air pollutants (and in the Administratur's discretion, other air pollutants) to the Great Lakes

(A) As pair of the network provided for in this paragraph, and not later than December 21. 1991, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hexardous air pollutants in both dry and wet conditions.

(B) The administrator shall use the data provided by the network to identify and truck the movement of bavardons are pollutants through the Great Lakes, to demention the portion of water pollution leadings actificately to atmospheric deposition of such pollutants, and to support development of remental action plans and other management plans as required by the Great Lakes Water Quality Agreement.

(C) The Administrator shall assure that the data collected by the Great Jakes atmospharic deposition monitoring distwork is in a format compatible with databases apended by the incornational Joint Commission, Council, and the several States of the Great Laites region

#### (3) Monitoring for the Chesapeake Bay and Lake Champtain

The Administrator shall establish at the Chesapeako Ray and Lake Chempish atmos, pheric deposition stations to member deposition of laserdoos air pollutants (and in the Administrator's lineralan, other air pollucants) within the Chesapeako Bay and Lake Champiain watersheds. The Administrator shall determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champiain, investigate the convess of air pollutants deposited in the watersheds, evaluate the health and environmental effects of such pollutants loadings, and shall sample such pollutants in those, that and writhin the watersheds, as necessary to characterize such effects.

#### (4) Monitoring for constal waters

The Administrator shall design and deplor atmospheric deposition monitoring betworks for coostal Wasers and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring medicules, and to determine the relative contribution of atmospheric pollutants.

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to pullutant loadings. For purposes, of this subsection, "creatal waters" shall mean estuaries selected pursuant to section \$20(a)(2)(A) of the Federal Water Pullution Centrel Act [33 U S C 193(a)(2)(A)] or listed pursuant to section \$20(a)(2)(B) of such Act [33 U.S.C. 1330(a)(3)(B)] or estractus research reserves designated pursuant to section 1461 of tible 16.

#### (6) Stapout

Widdle 3 years of November 15, 1990, and bienmally thereafter, the Administrator, in enoperation with the Under Secretary of Commerce (or Oceans and Atmosphere, shall submit to the Originas a report on the results of any monitoring, studies, and livestigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of—

(A) the contribution of almospheric deposition to policition loadings to the Great Lakes, the Chesopeuke Bay, Lake Champlain and Coastal waters;

(B) the environmental and public health effects of any pollution which is attributable to approached deposition to the Great Lakes, the Cheespeake Ray, Jake Champtain and courtal waters;

(C) the source of sources of any notionion to the Great Lakes, the Chesapeake Day, Lake Champian, and constal waters which is attributable to attrophismic deposition.

attributable to atmospheric deposition (D) whether pollution loadings in the Great Lakes, the Chesapeaks Bay, Lake Champlein or coastal waters rather or continued to exceedances of drinking water standards pursuant to the Sale Drinking Water Act [42 U.S.C 39M of seq.] or water quality standards possessed to the Foderal Water Pollution Control Act [73 U.S.C 125t on soq.] or, with respect to the Great Lakes, ascessdances of the specific objectives of the Great Lakes.

(E) a description of any revisions of the requirements, standards, and immitations pursuant to this chapter and other applicable Foderal laws as are necessary to assure protection of human health and the environment.

#### (8) Additional regulation

As part of the report to Congress, the Adminiateacon shall determine whether the other provisions of this section are adequate to prevene serious adverse effects so public health and serious or whilespread environmental offects, including such effects regulting from indirect exposure pathways, associated with atanospheric deposition to the Great Lakes, the Chesapsake Bay, Jako Champlain and coastal waters of hazardons als pollutants (and their atennephento transformation products). The Administrator shall take into concideration the tendency of such polinisate to broaccamulate. Within 5 years after November 15, 1890. ste Administrator shall, based on such report and determination, promplyate, in accordance wich this seculon, such further emission standards of control measures as may be decessary and appropriate to prevent such effects, in challing effects due to bloscoumulation and indirect exposure pathways. Any requirements promisgated possiumt to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 7627(a) of this tibe

#### (a) Other provisions

#### 41) Electric utility steam generating units

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(A) The Administrator shall perform a study of the hazards to public health reasonably antadapated to coour as a result of emissions by electric utility steam generating units of pollutuals listed under subsection (a) of this section after imposition of the requirements of this chapter. The Administrator shall report the results of this study to the Congress within 3 years, after November 15, 1990. The Admir.istrazer shall develop and describe to the Admunistrator's report to Congress alternative control strategies for emussions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator fluis and regulation is sppropriate and necessary after considering the resolts of the study required by this subpara-

(B) The Administrator shall conduct, and transmit to this Cobgress not later than 4 years after November III. 1990, a study of mecomy emissions from electric mility steam units, and other sources, including area concest. Such chedy shall consider the rate and mass of such emissions, the health and environmental effects of soch emissions the control such emissions, and control such emissions, and the costs of such technologies which are available to control such emissions, and the costs of such technologies.

(C) The Namonal Institute of Sevironmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after November 15, 1860, a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to accur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

#### (2) Coke even production technology study

(A) The Secretary of the Department of Energy and the Administrator shall jointly enderted-a Sysar Study to assess coke over production emission control technologies and to assist in the development and commercialization of technologie; and secreonically viable control technologies which have the potential to significantly reduce emissions of basardness air pollutants from coke oven production facilities. In Healtfying control technologies, the Secretary and the Administrator shall consider the range of existing coke oven apprehensive and hattery design and the systlability of sources of materials for such code oven seems as well as alterhatives to existing code oven production design

(II) The Ascribery and the Administrator are nuthorized to enter into agreements with persons who propose to develop. Install and opersic code production emission control technologies which have the patential for signifi67412

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cant emissions reductions of basardons air pollutants provided that Federal funds shall not exceed 50 per centum of the cost of any project exclared pursuant to this paragraph

101 On completion of the study, the Secretary shall exhant to Congress a report on the results of the study and shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke even production facilities to reduce residual tisks remaining after implementation of the scandard environmentation of the scandard environmentation of the section.

(D) There are authorized to be appropriated \$5,000,000 for each of the (large) years 1992 through 1997 to carry out the program sufficient by this paragraph

#### (3) Publicly owned treatment works.

The Administrator may conduct, in cooperation with the owners and operators of publicly owned proatment works, studies to characterixe emissions of hazardous our pullulable emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demიჟანიგეი ტიუგლი, უიგაადით ნიუ such emissions. When promining any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control inessages that Include pro-treotment of discharges canaling seriasions of batardous air pollutests and process or produnt subshibitions or limitations that may be effective in reducing such amissions. The Adminiculator may preservice uniform sampling, modeling and risk seessment mothods for use in implementing this autecolion

#### (4) Oil and gue wells; plauline facilities

(A) Notwitherarding the provisions of subsection (a) of this suction, emissions from any off or gas emploration or production well (with its essectional equipment; and consistent from any popular compressor of pump station shall not be aggregated with emissions from other similar option, whether or not such units are in a contigence area or under correct contigence area or under correct or stational are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be assistanted for any purpose under this section.

(B) The Administrator shall not list oil and gas production wells (with its associated aquipment) as an area served category under spin-worthing of this scotton, except that the Administrator may establish at ones scotto category for oil and gas production wells to category for oil and gas production wells to cated in any metropolican statistical area or consolidated metropolican statistical area with a population by excess of inillian. If the Administrator determines that enusalors of Administrator determines that enusalors of prosect more than a negligible may of process effects to public health.

#### (5) Hystrogen satisfide

The Adminishment is directed to assess the hazards to implie health and the environment resulting from the emission of hydrogen sul-

fide assertated with the extraction of oil and untufal gas resources. To the extent procticable, the assessment shall bolld upon and non duplicate work conducted for an appearmanus parangent to section 3000km) of the Solid Waste Disposal Act (42 U S.C. 6982(m)) ami shall reflect consultation with the States. The essessment shall include a review of existing Stars and industry control etendence, teolimigues and enforcement. The Administration shall import to the Congress within 24 months after November 2a. 1990, with the findings of such assessment, aggraber with any recommendahiors, and shall, as appropriate, develop and implement a control strategy for emissigns of hydragen sulfide to protect human beauth and the environment, based on the finitange of such assessment, using entitorities under tills chapter including sections, 7411 of this title and this section.

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#### (B) Hydrofluoria eald

Not inter than 2 years after November 15, 1960, the Administrator shall, for those regions of the country which do not have companionalize health and safety ingulations with respect to hydroffsoric acid, complete a study of the potuntial beards of hydroffsoric acid and the esses of hydroffsoric acid and the esses of hydroffsoric acid in industrial and commercial applications to public health and the Shiffcornest considering a range of events including worst-case accreents) releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate

#### (7) RCRA facilities

In the case of any category or subcategory of species the air compassors of which are explicitly confidenced the compassors of which are explicitly confidenced. Act (42 th 5 c 692) et seq.], the Administrator shall take into account any regulations of such contactors which are promulyated unity such subtitle and shall, to the maximum extent protected and consistent with the provisions of this section, ensure that the provisions of such subtitle and this section are consistent.

#### (of National Academy of Sciences study

#### (1) Request of the Academy

Within 0 months of November 18, 1990, the Administrator shall enter into appropriate arrangements with the Narional Academy of Belences to conduct a review of—

(A) risk assessment methodology used by the Knylronmental Protection Agency to determine the carolinegenic risk associated with exposure to haterdone air pollutanus from source categories and subcategories subject to the requirements of this seeklen, and

(D) reignovements in such methodology.

### (2) Elements to be shulled

In conducting such review, the National Academy of Salences should consider, but not be limited to, the following (A) this techniques used for estimating and

(A) blos techniques asset for estimating and describing the carninggenic potency to huinams of hazardoes air pollucants; and

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(B) the techniques used for estimating exposite to hazardous air pollutants (for hypothetical and sofual (nazontally exposed addividuals as well as other exposed individuals).

#### (3) Other health effects of concern.

To the estent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of advarse housen health effects other than cancer for which eate bloostids of expresse may not exist, including but not finished to, inheritable genetic mutations, birth defects, and reproductive dysterictions

#### (4) Report

A report on the results of such review shall be submitted in the Senate Committee on Environment and Public Works, the House Both mittee on Energy and Commerce, the Blok Assessment and Management Compilsoon established by section 303 of the Clean for Act Amendments of 1968 and the Abstituterature of isfar than 38 months after Povember 13 1890.

#### ISI Amideore

The Administrator shall masses the Adadomy in grathering any information has Adadomy deems necessary to darry out this subscattor. The Administrator may use any authority under this chaptor to obtain information from any person, and to require any person to contact tests keep and produce repurts and make reports paspecting research or other activities conducted by such person as necessary to every not this subsection.

#### 16) Authorization

Of the force suther set to be appropriated to the Administrator by this chapter, each emounts as are required shall be available to carry out this subsection

#### 17) Guidellage for carcinograph risk expersment

The Administrator shall consider, but need not adopt, the recognitionations contained in the report of the National Academy of Solonces propured pursuant to this subscribe and the views of the Science Advisory Board, with respect to such report. Polar to the granulga. tion of any standard under subsection (f) of thus section, and after notice and opportability for comment, the Administrator shall publish invised Guidelines for Cartinogenic Risk Assessiment or a detailed explanation of the rensens that any meanmoundships conceined in the report of the National Academy of Solences will not be implemented. The publication of such ravised Guidelines shall be a final Agency action for purposes of section 7807 of thus tittle.

#### (p) Mackey Letand National Urban Air Toxics Reagareh Center

#### (1) Establishment

The Administrator shall overses the establishment of a National Urban for Toxics Research Center, to be incated at a university, a hospital, or other facility capable of undertaking and maintaining similar research capabilities in the areas of epideniology, oncology, taxicology, pulmohary inchione, pathology.

and Mostatistics. The renter shall be known as the Mickey Leland National Eutan Air Toxics Research Conter. The geographic site of the National Urban Air Toxics Research Center obtaile be further directed to Harris Goung, Texas, in order to take full advantage of the well developed scientific community presence on one of the Texas Medical Center as well as the extensive data proviously complied for the comprehensive mentioning system corresply to place.

#### (2) Board of Directors

The National Urban Air Texica Research Center shall be governed by a Board of Directors to be comprised of 9 members, the appointment of which shall he allocated no rate among the Speaker of the Board, the Majorthy Leader of the Senate and the President. The members of the Board of Directors shall be selected based in their respective academic and professional backgrounds and expertise in professional backgrounds and expertise in mental pollution and industrial hygiere. The dubes of the Board of Directors shall be to determine policy and research guidefines submit views from conter sponsors and the mibbs and activities.

#### (3) Scientific Advisory Panel

The Board of Directors shall be advised by a Scientific Advisory Fanel, the 12 members of which shall be appointed by the Board, and to include eminent members of the scientific and one lead communities. The Panel membership may include accentants with relevant experience from the National Institute of Environmental Health Sciences, the Conter for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board is developing the research agenda, reviewing, proposals and applications, and advise on the awarding of research grants.

#### (4) Funding

The center shall be established and funded with both Pederal and private source funds.

#### lg) Savings provision

#### (3) Standards previously promolgated

Any standard under this sociation in officer beform the date of enactment of the Clean Air Aut Arnendments of 1090 [November 15, 1990] shall remain in force and effect after such date unless modufied as provided in this section beform the date of enactment of such Amendinétité or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promitigated, but has not taken effect, hefore each date thall not ibon warfur stronghuemA done of Datosla of field as growided in this section before such date un under such Amendments. Each such standard shall be reviewed such it appropriate. rowised, on company with the regulisments of subsection (d) of this section within 10 years after the date of enactment of the Clean Air ACC Amendmenta of 1990, If a timely petition 47412

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for review of any such blandard under section. 7607 of this bitse is pending an such date of esof 11 Medical ed (Lette brachitus ed), Unerstand complies with this section as in effect before thus date. If any such standard is remanded to the Administrator, the Administrator may to tips Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the data of enactinant of the Clean Air Act Ametidinonia of 35860.

### (2) Approisi rule

Montal the catality paragraph (1), no standard shall be catalitylish under this section, as amended by the Clean Air Art. Amendments of 1990. für radiohublide emissions from (A) nörmental phosphogous plants, (B) grate calcupaylon elemental phosphorous plants (C) phosphogy psum stacks, on (D) any subcategory of the foregoing. This section, as in offert prior to the date of enuclament of the Maan Afr Ach Amendments of 1990 (November 15, 1990). shall romain in effect for radiopublide soussions from such plants and seaths

### (3) Other categories

Notwithstanding papagraph (1), this section, as in effect prior to the date of anactment of the Clean Air Act Amendments of 1990 [Novertibor LS. 1980], shall ramain in effect for pullinggisto emissiona from non-Department of Emergy Federal (mullitles that are not itconsed by the Muslear Regulatory Commission, coal fired utility and industrial burlets. underground prantism militas, surface aranjum mines, and disposal of drapium will failings piles, unless the Administrator, in the Administrzabnia discretion, applies tile regimmemente of this section as modified by the Clean Air App. Algendaments of 1900 to such sources of mulionucildes

### (4) Medical facilities

Notwithstanding paragraph (1), no standard promuegated carder this section prior to November 15, 1990, with respect to medical besearch or treatment facilities shall take effect for two years following November 18, 1990, කර less the Administrator makes a determination pursuant to a rulemaking under subsection (Δ)(9) of this section. If the Administrator determines that the regulatory program catabhabed by the Nuclear Regulatory Commission for such facilities does not provide an ample manyin of salety on protect public health, the requirements of this section shall fully apply to each (acilities, If the Administrator determines that such regulatory program does brovide an ample margin of sufety to protect the public benità, the Administrator is not requippo en promaignite a seandard under tais gentlem for such facilities, as provided in subsection (d)(9) of this section.

### (z) Prevention of accidental releases

### (1) Purpose and general duty

th shalt be the abjective of the Jegohatlona and programs authorized under this subsection to prevent the accidental release and so micimige the consequences of any such release of any substance listed pursuant to paragraph (%)

or any other extremely hazardons autotaises The owners and operature of stationary sources producing, punceroing, bandling or atoring such substances have a general duty in the entre manner and to the same extent as section 654 of title 79 to Identify hazaris which many result from each releases using appropriate hazard assessment techniques, to design and maintein a safe facility takinz eccir steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which ee oceas. For purposas of this parngraph, the provisions of somethe 7804 of this sitie shall not be available to any person or otherwise be constanted to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, tripiled or applied to create any liability or hads for suit the componential for bodily autory or any other injury or property damages to any person which may result from accidental releases of such autabances

### (2) Definitions

(A) The term "accidental release" means an ubwittingsted sinission of a regulated solstance or other extremoly hazardous anhetance. ioNo the ambient zir from a stationary course.

(R: The term "regulated substance" means a

enhetsage listed under paragraph (3). (C) The term "stationary source" means any baildings, strachares, equipment, installations er substance emitting stationary activities (i). which belong to the same monstral group. (ii) which are locased on one or more configures properties, (III) which are under the control of the same person for persons under communicontrols, and (iv) from which an accidental release may occur.

(D) The term "retail Gollity" means a ste-

tionary source at which more than one-half of the income is obtained from direct sales to end users or at which more than ane half of the Such sold, by volume, is said through a cylinder exchange program.

### (3) List of substances

The Administrator shall promulgate not tater than 84 months after Nevember 15, 1890, an initial list of IOI substances which, in the case of an accidental velages, are known to cause ur may reasonably be anticipated to ranse death, injury, or extens adverse effects. to human licelih of the environment. For perposes of promutgating such that, the Adminiebratas shall use, but is not limited to the list of extremely hexactions substances published under the Emergency Planning and Commu-nity Sight-to-Know' Act of 1988 (42 U.S.C. 1100) et seq.), with such medifications as the Administrator deems appropriate. The initial list shall include chiorine, arhydroca ammopis, meshyl chloride, othylene cytie, ylpyt chlockie, methyl feccyanate, hydrogen cyanide, ammonia, hydrogen suifido, toluono diffucyanate, phospene, bromine, anhydrous hydrogen chiloride, hydrogen Suoride, anhydram solfar dioxide and solfar brioxide The Initial list shall include at least 100 substances which pose the greatest that of causing death,

<sup>1965</sup> In ordered, Probably should as nit electro-known.

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injury, or serious adverse Affects to humbai health or the environment from accolonial releaves. Regulations establishing the list shall enclude an explanation of the bears for establishing the list. The tist may be revised from time to time by the Administrator on the Adundistrator's easi metion at by patition and shall be reviewed at least every 5 years. No air poliutant for which a dational primary ambient air quality standard has been established statt on traduded on any each list. No ashstance, practice, process, or activity regulated under aubchapter VI of this chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures espartables to collete but addition ent no from the list cetablished under this paragraph consisting with those applicable to the list in subsection (b) of this Asction.

### (4) Pactors to be considered.

In listing autotables under passgraph (6). the Administrator-

(A) shall conzider-

(i) the severity of any moute adverts health effects executed with advantantal coloases of the sabbtance:

(II: the likelihood of scoldenta) releases: of the substance; and

(iii) the potential magnitude of human exposition to accidental releases of the subgrance, suid

(B) shall not list a flammable salesance when used as a fuel or hold for sale as a fuel at a retail faichty onder läns subsection sololy because of the explasive or financiable properties of the autatance, unless a fire or explosion caused by the solustages will result In acute adverse challe effects from human exposure to the substance, including the unborned fuel or its contribution byproducts. caster than those caused by the heat of the fite or impact of the explosion.

### (5) Threshold quantity

At the time any autotance is itsted parauant. to paragraph (3), the Administrator shall escabilish by rule, a threshold quantity for the substance, taking into account the toxicity, reachiving unlatility, dispensionly, combustibility, or figureshibly of the substance and the amount of the substance which, as a result of an accodental release, is known to cause or may reasonably be abstrigated to cause death, namud es accesée essevha anolmes no vyudni health for which the substance was Hoted. The Administrator is subhorized to ostalifish a greater Circuloid quantity for, or ro exempt entarely, any substance that is a nutrient used sa agotouštare wten šielú by a šamien.

### (6) Chemical Safety Board

-bacqabat as tedatifulte ydarat as anath (A) and selleny heard to be known as the Chemical Safety and Heserd Investigation Hoard

(B) The Post-I shall contist of 5 premiers, including a Chairperson, who shall be appointed by the President, by and with the advice and concent of the Senace. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and domanstrated knowledge to the fields of nortdent reconstruction, safety engineering, human factors, varianlegy, or air bulliotich vegalation. The serms of office of members of the Eoglet shall be 5 years. Any momber of the Dours, inchoding the Champerson, may be removed for ine Polency, neglect of duty, or matteasance in office. The Chairperson shall be the Chief Executive Officer of the Hoard and shall exer-0)ee বীল executive and administrators tuno tions of the Board.

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(C) The Brand shall—

(I) investigate (or cause to be invesfigated; determine and report to the public is willling the lasts, conditions, and circumesances and the cause or probable cause of any accidental release resulting in a fatality, sectous injury or substantial peoperty damages;

(ii) isade periodic reports to the Congress, Federal, State and local agencies, including the Euveronmental Protection Agency and the Occupational Safety and Health Administration, concerned with the assety of chemical production, processing, handling and storage, and other interested persons decommending measures to reduce the likelibood on the consequences of acindental releases and proposing correction steps to make themical production, potosssing, han dling and atomico as suft and thee from risk of injury as 'a possible and may include in such reports proposed rates or orders which stimula be reset by the Administrator uniterthe Rathamty of This seation of the Recremary of Labor under the Occupational Basety and Health Act (28 U.S.C. 65) et seq. to prevent or minimize the consequences of any release of scharcoles that may cause death, including or other servous adverse offects on human health or substantial property dantago as the result of an accidental re-Lnase; Risit

(65) establish by regulation requirements bludby on persons for reporting accidencal releases into the ambient air subject to the Sound's investigatory (unfallented Repret-ing "Gauses to the National Response Cebtor, in lieu of the Board directly, shall satisly such regulations. The National Response Center shall promptly nowly the Roard of any releases which are within the Beard's ju-

risdiction.

(D) The Board may utilize the expertise and

experience of other agencies.

(E) The Board shall coordinate its activities. wich investigations and studies conducted by ACP-in agencies of the United States baying a responsibility to protect public health and safety. The Board shall either into a memorandum of undererending with the National Transportation Salety Board to assure could:nation of functions and to limit duplication of activities which shall designate the Maxional Transportation Sulety Board as the lead agenby ter the investigation of releases which are manaportation related. The Board shall not be suth or read to investigate marine oil spills, which the National Transportation Safety Road is authorized to investigate. The Board -Enderstand to include common a cute retrieved fluids ing with the Occupational Safety and Health

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Administration so as to hant duplication of activities in no event shall the Board forego an investigation where an accidental release causes a fatality or serious anjury among the general public, or had the potential to cause substantial property damage or a number of deaths or father-a among the general public.

deaths on injuries, among the general public.

(F) The Board is authorized to conduct research and strates with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which induntes the presence of a potential hazard or hazards. To the except practicable, the Doard shall conduct such studies in enopetation with other Federal agencies naving emergency response authorities. State and local governmental agencies and associations and organizations from the inequirie, commercial, and comprofit sectors.

(O) No part of the conclusions, Ihadings, or recommendations of the Board relating to any section the release or the investigation thereof shall be admitted as extience or used to any section or sum for damages arising out of any

history mentiomed in mich report (II) Not later than I8 months effor November 15, 1990, the Hoard shall publish a repute accompanied by recommendations to the Administrator on the use of hatard assessments in preventing the occurrence and inhibitizing the consequences of accidental releases of extenmely hazardous substances. The recommendacions skak tablude a list of extremely hasaldons apparations which are not ingulated substances (including threshold quantities for mich substances) and categories of stationary actineds for which based assessments would be an appropriate measure to sid in the prevenstan of accidental releases and to measurise the consequences of these releases that do occur. The recommendations shall also applied a description of the information and enclybes which would be appropriate to include in any hazard assessment. The Board shall also make peophimoudarjons with respect to the colo of risk management plans as required by puragraph [St(R)\* to preventing accidental releases. The Buard may from thing to time review and perise Its recommendations under this sub-

paragraph.

(I) Whenever the Poard submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formitly and in writing not later than 180 days after recept thereof. The response to the Soard's encommendation by the Administrator shall indicate whether the Administrator will—

(i) Initiate a relembility of 18806 such orders as are necessary to implement the recommendation in 2011 or in part, pursuant to any timetable contained in the recommendation.

(ii) decline to initiate a colemaking of taxe outgrs as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only to

part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

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termination.

(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whosever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in withing not later than 100 days after receipt thereof. The response to the Board's recommendation by the Administrator' shall indicate whether the Secretary will—

(I) initiate a rulemaking or lasce such ordem as are necessary to implement the recommendation to fell or to part, pursuent to any timetable concained in the recommendation."

(ii) fectine to initiate a rulemnking or issue unters as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any carletten from the ediednie contained in the recommendation, shall be accompanied by a statement from the Secretary speting forth

the reasons for such determination.

(R) Within 3 years after November 15, 1880. the Deard shall issue a report to the Administra trator of the Environmental Protection Agenby and to the Administrator of the Occupateorial Gallety and Health Administration recommending the adoption of regulations for the preparation of main management plans and general requirements for the prevention of acoldental releases of regulated substances into the ambing an Oneluiling Encommendations for listing substances under paragraph (3) and for the minigation of the potential adverse of feet on himfan health or she environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which about be issued by the Administration under authority of this subsention on by the Secretary of Labor chider the Occupational Safety and Realth Act [29 U.S.C. 65; et seq.] Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (e) other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating

regulations required by paragraph (78)Ht.
(I.) The Board, or upon anthority of the Board, any member thereof, any administrative law judge employed by it assigned to the Board, or any officer or employee fully designated by the Board, may for the purpose of carrying out duties authorized by subpara-

graph (5)

(1) hold such hearings, all and act at such limits and places, administer such parts, and require by subpoens or otherwise attendance and testimany of such witnesses and the production of evidence and may require by

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<sup>&</sup>quot;So macriered Tie: word for a possibly shrulf accen-

<sup>150</sup> in original 'Toe word "Administrator" probably should be "Sec. easy).

TIPLE 42-THE PUBLIC PEALTH AND WELFARE

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order that any person engaged in the production, processing, handling, or storage of extracially haskedone substances submix withten reports and responses to requests and quescious willow such time and in each form as the Board may require and

III) upon proventing appropriate credon bals and a written notice of insportion authority, enter any property where an architecture release causing a fatality, estimated payon substantial property damage has considered and do all things therein necessary for a proper investigation pursuant to substantial the interest property of the casemable terms records. Thes, payers, processes, controls and facilities and take such samples as any relevant to such unvestigation.

Whenever the Administrator or the Beard conducts are inspection of a facility pursuant to this ectsection, engloyees and their representatives shall have 100 some rights to participate in such imspections as provided in the Denugational Sufety and Health Act [28 U.S.C. 65] at sen 1.

(M) To addition to thes described in subparagraph (L), the Board may use any information gethering authority of the Administrator under this chapter, including the subposes, sower provided in section (90%)and) of this state.

(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the execuse of its functions and dates. The Board is anthomsel without regard to section 800 of title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and incomes of the Board with any other agency, liethtrice, or person.

(O) After the effective date of any reporting requirement promolgated pursuant to subparagraph (Cl(m) to shall be unlawful for any person to fail to report any release of any extrangoly hazardona satalance es required by such subparagraph. The Administrator is authorized to enforce any regulation or equito-ments established by the Doard pursuant to unbparagraph (C)(HI) using the authorities of apptions 7423 and 7414 of this tiple. Any request for information from the owner or operator of a stationary source made by the Boeth or by the Administrator under this section shall be treated. For purposes of sections 7409, 7414, 7416, 7420, 7509, 7604 and 7607 of this title and any other enforcement provisions of this chapter, as a request made by the Administrator under mortion 7414 of this tich and may be exforced by the Chalcherson of the Board of his the Administrator as provided in such rection.

(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Hoard.

(Q) Consistent with sateserier\* (G) and section 74.9 c) of this tritle shy records, reports or information obtained by the Dosid shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that own a showing satisfactory to the Board

ty any person that recents, reports, or information, or particular part shereof (sther than release or emissions date; to which the Boshi has access. If made public, is likely to causo sobstantial harm to the person's competitive position, the Board shull consider such renord. report, or information or particular portion thereof confidential in sometimes with sec-Mon 1905 of tutte 15, except that such record, tepora, ut information may be disclosed to other officers, employees, and authorized repcoseniutivos of the United States concorned with entrying out this chapter or when rel avant ander any proceeding under this chapten. Tina subparagraph does not constitute au-Monty to withhold records, reports on informethod (yong the Congress.

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(R) Whenever the Board shipmits or transmaks any budget estimate, hudget request, supplemental budget request, or other budget information, legislative recommendation, preraisel textimony for congressional hearings, recommendation of study to the President. the Secretary of Labor, the Administrator, or the Director of the Diffee of Management and Bridget, it shall concurrently breakmit a copy thereof to the Compress. No report of the Sourd shall be subject to review by the Admicistrator or any Folural agency or to judicial review in any court. No officer or agency of the United States shall have anchoring to require the Board to subput the budget requests or estimates, legislative recommendations. propared testimony, comments, recommendations of reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, ses timony, comments or reports to the Congress. In the performance of their functions as estat-Haben by this cliepter, the members, officers and employees of the Board shall not be reaponalbja to or aubjact to supervision or direction, in carrying out any dataes under this subsection, or any afficer or emplayee or agent of the Environmental Protection Agency, the Department of Eshor or any other agency of the United States except that the President may remove any mombar, officer or ctaployee of the Board for these chemical medient of drifts or maltensance in office. Nothing in Utils suction shall affect the application of citie 5 to officers or employees of the Board.

(S) The Board shall submit an annual report. to the President and to the Congress which shall include, but not be limited to, information on applicantal releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, she actions which have been taken by the Administrator or the Secretary. of Labor or the heads of other agencies to inplement such resordinendations, an ideatificatian of priorities for study and unvestigation in the succeeding year, progress in the develophically of disk-reduction technologies and the response to and implementation is significant research findings on chemical astery in the public and reivate sector.

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#### (7) Accident prevention

(A) In order to prevent accidental releases of ( regulated substances, the Admomstrator is authorised to promotests release prevention, dotection, and actrection requirements which may include monitoring, record-keeping, reperting, training, vapor recovery, secondary containment, and other design, equipment. work practice, and operational regularizedts Regulations promulgated under this paragraph may make distinctions between various types. classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to the size, location, process, process controls, quantity of sub-stances handled, potency of substances, and resinue capabilities present at any station. any source. Itegulationa promulested pursoant to this subparagraph shall have an effective date, as determined by the Administrator, assimiling complifance as expeditiously as practicable.

(Ditt) Within 3 years after November 15, 1990, the Administrator fitall promuleste reason-O combing startquign bus ascientings sick provide, to the grantest extent practicable, for the prevention and detersion of accidental releases of pagiciated autotomices and for pasponse to such releases by the owners or operators of the sources of such releases. The Administrator shall utable the expertise of the Secretarned of Bransportation and Labor in posmalgaling such regulations. As appropriate, such regulations shall cover the see, openutaon, repair, replacement, and maintenance of equipment to manufact detect, inspect, and coptrol such releases, including training of persons in the use and maintenance of such equipment and in the conduct of benefic inepoplions. The regulations shall include procetheres and cheasures for emergency response after an accidental release of a regulated substance in order to protect human health and the equipmosphic The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, pherations, processes, class and calegories of acordes and the voluntary settings of such sources to prevent Such releases and Pospond to such releases. The restinguous shall be applicable to a stationary mource 2 years after the date of promulgation, or 8 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3). whichever is later.

(II) The regulations maken this subparagraph shall require the owner of operator of stationary scorees at which a regulated substance is present to more than a threshold quantity to present to more than a trick mapagement plan to detect whit prevent or minimize scoldental releases of such substances from the stationary source, and to provide a prompt exergency response to any such releases in order to protect homan beside and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a herard assessment to assess the potential effects of an notificital release of any

regulated ambatance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental resease.

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(III) a program for preventing accidental releases of regulated substances, unsinking safety premulators and maintonance, mognituding and amployee dealthing theserves to be used at the convex; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substainer so as to protect human health and the covimenment, including procedures for inferring the public and local agencies responsible for respecting to accidental releases, emergency health cure, and employee training

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, or the extent practitation include model risk management plans.

(III) The owner or operator of each stationary source covered by clause (ii) shall register a risk inausgement plan preparad under this subpareauspit with the Administrator before esualo rebita suolitalinget lo stab evitocille elit (i) In such form; and manner as the Adminis trator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Haspird Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to world-good (toesses which may occur at such source, and shall be available to the public under section 7419(c) of this tests. The Administrator shall establish, by ruin an auditing system to regnlarly review and, if necessary, require revision. in risk management plans to sentre that the plans comply with this subparagraph. Ruch such plan shall be updated periodically as required by she Administrator, by rule.

(C) Any requisitions promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsociation, he consistent with the recompressions and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the compares of small business on promplyating regulations under this subsection.

(5) In carrying out the Austrosty of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall consultate any requirements under this paragraph with any requirements established for comparable pur-

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poses by the Occupational Satety and Health Administration or the Department of Transportation. Nothing in this subsection shall be incorported, construed or applied to Impose evidencements affecting, or to grant the Adminio trator, sine Chemical Safety and Hasard Investigation. Board, or any other agency any authority to regulate (tuchding requirements for hazard assessment), the auchdental release of radionnolides ensing from the construction and operation of facilities Received by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subscribin, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement is violation of such regulation or requirement trade togglation or requirement under this subscribes shall for porposes of sections 7012, 7514, 7416, 7480, 7604, and 5007 of this table and other enforcement provisions of this chapter, so treated as a standard in effect under anhaection (d) of this section.

(F) Notwithstanding the provisions of subchapter V of this chapter or this section, on stationary somms shall be regained to apply for, or operate pursuant to, a permit issued under such subchapter aciety because such source is subject to regulations or requirements under this subsention.

(9) In exercising any authority under this subsection, the Administrator shall not for purposes of section SN(b(1) of time 29, be deamed to be examplifing standards or chighlatons affecting occupational safety and health.

(H) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—

(i) DSFLATTIONS.—In this subparegraph:

 (i) Obverso respon —The term horward:
 person nears.—

(an) an Officer or simplicyee of the United States;

(bh) all officer or employee of an agent or contractor of the Federal Government;

(so) an officer or employee of a State or local government;

(dd) an officer or employed of an agentor contractor of a State or local government:

(ee) an individual affiliated with an entity that has been given, by a Bials or local government, responsibility for preventing, planning for, or responding to accidental releases;

(fill an officer or employee or an agent or compractor of an entity described in Step (ed.) and

(gg) a qualified researcher under clause (with

(11) Overcome uses. The term "official use" means an action of a Foderal, State, or local government agency or an actity referred to in subclause (These Ditended to carry out a function relevant to preventing, plantiting for, or responding to accidental releases.

(III) OFF-SITE COMBRUSION ANALYSIS IN-HIRMATION. The term "off site one sequence analysis information" means those portions of a risk management plan, excluding the excentive summary of the plan, collidating of an evaluation of 1 or more worst-case release scenarios in alternative release scenarios, and any closurous data base created by the Administrator from three portions.

(IV) REX MANASUMENT TEAM. The form "risk management plan schmitted to the Administrative by an ewne; or equator of a statement because made: subpatterisht (Hear)

(ii) PROULETIONS. Not later than 1 year after August 5, 1999, the Presidents shall :

(I) caeses-

(an) the increased mak of terrorist and other original activity associated with the posting of off-site consequence analysis information on the Internet; and

(bb) the incentives areased by public disclosure of aff-side consequence analysis information for reduction in the risk of arcidental releases, and

177; bosed on the assessment ender subclause (f), promulgate regulations governing the distribution of off afterconsequence analysis information in a manner that, in the opinion of the President minimises the likelihood of accidental releases and the risk described in subclause (7)(22) and the likelihood of harm to public health and welfare, and—

(as) allows access by any member of the public to paper copies of oif-site consequence sustypis information for a limted number of standarday sources tocated supplies on the United States, without any geographical restriction;

thin Allows office public access to offsite consequence englysis information as approphiate:

contailors necess for official use by a covered person described in any of terms (as) through (f) of clause G(l) freferred to in this subclause as a "State or level network (erson") to off-site consequence analysis information relating to stationary sources located in the person's State; (dd) allows a State or local covered

idd) allows a State or local covered person to provide, for official use, afficie consequence analysis information relating to stationary senders located in the person's State to a State or local covered person in a contiguous State; and

tes) uthaws a State or local covered person to obtain for official use, by request to the Administrator off-size consequence analysis unformation that is not available to the person under item (co).

(11) AVAILABILITY BATER PRETROM OF INFORMATION ACT. —

Full Martines Agr.—

(I) Prest YEAR.—Off-site consequence surifyis information, and any ranking of stationary sources derived from the information, shall not be made available under section 558 of hitle 5 during the 1-year period beginning on August 5, 1999.

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- (II) AFTER FIRST TBAR—II this legulations goder clause (ii) are 190m@sured on or talare the and of the period described in subclause (1), off-site consequence analysis information covered by the Patolations. and any tanking of atationary sources demyed from the information, shall not be made available under section 55% of title o after the end of that period.
- (III) APPLICABILITY.—Subclauses (I) and shufuna someopeerno erastio or viqua iii; Information submitted to the Administrator before, on, or after August 5, 1999.
- tiv) Амишавшту от пробиманию присыс даржутую присто —The Administrator TRANSITION elgali, mako off-ejto gonnegoende analysta in formation available to covered pursons for official case in a grander that meets the requirements of Looms (cc) bhrough (cc) of clause (Muff); and to the public by a form that does not make available any informatinn concerning the identity or location of snatismany sources, during the period-(1) beginning on Adgus, 5, 1998, and
  - (II) ending on the earlier of the date of promising of the regulations under clapse (ii) as the date that is I year after August 5, 1999
- (v) Pagianstrips on tinautrilianizado pescad-SURE OF INFORMATION BY CONGLUC PERSONS — (I) IN CENERAL A SECTION OF AUGUST 5.
- 1999, a covered person shall not disclose to the public off-site consequence analysis in formation in any form, or any statewide or mational ranking of identified stationary spurces derived from such information, except as authorized by this subparagraph (min)uding the regulations probabled under clause (ID). After the end of the Iyear period beginning on August 5, 1999, if regulations have not been promulgated under clause (11), the preceding sensence shall not apply
- (II) CRIMINAL PENALTISS. Notwithstandang sectson 7418 or this table, a covered person that willfully violates a restriction or probably on established by this subparagraph (including the regulations promulgated under clause (st) shall, upon conviction, he fined for an infraction under sec tion 3571 of title IR (but shall nut he subject to tarpetkommunit; for each unworthorecurapseance arts-No to ennectació heza analysis information, except that subsantiam (d) of such section 26/1 thall not apply to a case to which the offense results. in proundary loss unless the defendant knew that such iges would occur. The disclosure of off-site consequence analysis information for each specific Stationary source shall be considered a separate of mase. The total of all penalties that may he imposed on a single person or organization under this form shall not exceed \$1,900,000 for violations communical during
- any I osleadar year (3H) Applicamility --If the owner of op egange of a standonary source makes offsite consequence analysis information relating to that stationary source available to the public wishout restrictles—

(&A) subplanses (I) and (II) shall not apply with respect to the information;

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- (bb) the owner or operator shall notify the Administrator of the public availability of the information.
- (IV) Liex...-The Administrator shall maintain and make publishy available a Had of all stadionary sources that have provided notification (III)(be). rander subclause
- (vi) Normal. The Administrator shall provide notice of the definetion of official use as provided in clause (i)(III)? and axamples of notions that would and world not meet that deflottion, and notice of the restrictions on further dissemination and the penalities es tabilished by this chapter to each covered person who receives off-sibe consequence analysis information under clause (iv) and establic asvisor adw nosted betavec does consequence analysis information for an of Ansal use under the regulations promuigated nickler (labee (11)
- (vli) Qualified ersearchers. (D In general —Not later then 19) days after August 5, 1999 the Administrator, in Consultation with the Attorney General. abul) develop and implement a system for providing off-site consequence analysis information, including facility identificafrom to any qualified researcher, including a qualified researcher from industry or any public interest group
  (II) LIMITATION OF DISEMINATION.—The
- system shall not allow the researcher to disseminate, or make available on the internet, the off-site consequence analysis information, or any purison of the off-site consequence analysis information, received under this clause.
- (VIII) REAL-ONLY INFORMATION TRUNKOUGHY 8Y87RM.—In consultation with the Attorney General and the heads of other appropriate Federal agencies, the Administrator shall establish an intermation cechnology system that provides for the availability to the pablic of off-site consequence analysis information by means of a central data base under the control of the Federal Government that cantains information that users may read but that provides no means by which so electronic or mechanical copy of the incormation may be made
- AND THEOLOGY FOR PURPOSE PRATEOLOGY (XI) ужылды қтанранды.—Тре Елуколуденда! Profession Agency, the Department of Justice, and other appropriate agencies may provide teclerical assistance to owners and operators of scatternary sources and partiespate in the development of voluntary industry atandards that will help achieve the oblectives sot forth in paragraph (1).
  (x) Expert on state of them, hav.
- (3) IN GENERAL.—Subject to subclause (II). This subparagraph (including the reguations promulgated under this subparagraph) shall supercede any provision of

<sup>\* 36</sup> to Oriental, Probably should be "jugited

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TITLE 42-THE PUBLIC HEALTH AND WELFARD

\$7412

State or local law than is incommission with this subparagraph (including the regulations).

HID AVAILABLING OF DEFORMATION UNDER STATE LAW. Nothing in this subparagingh precludes a State from making available date on the off-site consequences of chemiral releases esticated in accordance with State law.

(al) Reposits—

(I) IN GENERAL -Not later than 8 years after August 5, 1999, the Attorney General, in consultation with appropriate State, lugal, and Federal Government agencies, affected industry, and the public, shall submitt to Congress a report that describes the extent to which regulations promulgated wader this paragraph have resulted in actions, molading the design and maintenance of eafo facilities. That are effective in detecting, preventing, and munimizing the consequences of releases of regulated aubstances that may be expend by oriminal antivity. As part of this result, the A5507may (lenera) using available data to the extent possible, and a sampling of covered atationary sources selected at the discretion of the Attorney General, and in consultation with appropriate State, local. and Federal governmental agencies, aifented industry, and the public, shall coalso the valuerability of covered stationary sources to ofinifial and terrorist acsivity, ourrons endustry prectices regarding site security, and security of transporcation of angulated substances. The Autorney General Litait schmitt Uhia report, containing the results of the covidw, togother with recommendations, if any, for reducing vulnerability of covered stationary appress to criminal and serroust political so the Gammistee on Cammaras of the United States House of Representatives and the Committee of Environment and Public Works of the Calted States Senate and other relevant commisters of Con-ZTE55.

(II) [Nymans Report - Not later than 12 months after August 5, 1898, the Attorney General shall submit to the Committee on Committee of the United States House of Representatives and the Committee on Environment and Poblic Works of the United States Senate, and other relevant committees of Cobgless, an interim report that includes at a minimum

 (aa) the preliminary findings under subplance (1);

(55) the methods used to develop the Studings; and

(co) an explanation of the addividues expected to example that could exuse the fludings of the report wider spholenge (t) to be different than the preliminary fludings.

(III) AVAILABLETY OF INFORMATION—Information that is developed by the Attorncy General in requested by the Attorney General and received from a payored sectionary sharps for the purpose of conductong the review coder subclauses (I) and (II) be exampt from disclosure under section 552 at title 5 if such information would pase a threat to national specify

(xiii) Scops.—Tine subparagraph -

(i) applies only to covered persons; and (II) does not nAttict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a risk management plan or an electronic data base greated by the Administrator from off site consequence analysis (ajorgazion).

(xi)) AUTHORIZATION OF APPROPRIATIONS.— There are authorized to be appropriated to the Administrator and the Attorney General such sums as are necessary to carry out this subparagraph (including the regulations proacutizated under classe (iii), to romain available until expended

#### (8) Responses no hazard assessments

The Administrator may collect and publish information on accident scenarios and consequences covering a ranke of possible events for substances listed under paragraph (3). The Administrator shall establish a program of lenguerm research to develop and disseminate information on methods and techniques for lessard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

### (\$) Order authority

(A) In addition to any other action taken, what the Administrator determines that there may be an imminent and substantial endaggerment to the human bealth or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administration may secure such to Hef as may be necessary to abute such danger se stayes, and the district court of the United States in the district to which the threat acouts shall have locishetten to grant such relief as the public interest and the equities of the case may require. The Administrator may also, alter norder to the State in which the stariously corre is located, take other action under this paragraph including, but not howited to, assuing such orders as may be necessary to protect human health. The Adminismaken shall take action under become 7608 of this title is then shan this paragraph whenever the authority of such section is adequate to profess human health and the environment.

(B) Orders bessed pursuant to this paragraph may be enforced in an action brought in the appropriate Helted States district cours as 10 the order were lasted under section 7933 of this GUs.

(C) Within 180 days after blovember 15, 1990, the Administrator shall mibitsh guidance for using the order nathorities established by this paragraph. Such guidance shall provide for the coordinated use of the such process of this paragraph with other energency powers authorized by section 3506 of this Little sections 37(c), 384, 395 and 505(a) of the Paderaj Warde Pollintary Constrol. Act. (33, 5, 9, 3), 1331(c), 1318, 1919.

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3364(a)], sections 3007, 3006, 3002, and 7003 of the Solid Waste Ossposal Ant [42 U.S.C. 6927, 6928, 5934, 6973], sections 1440 and (431 of the Sale Drinklug Water Act (42 U S.C. 300)-1, 300)], sections 5 and 7 of the Texte Substances Control Act [16 U.S.C. 2004, 2006], and sections 5013, 54]4, and 5603 of this fitte.

### (10) Presidential review

The President shall conduct a review of relayer provention, mistgation and response anthorities of the various Federal agreemen and shall clarify and econdinate agency responembilities to again the most effective and effictent implementation of adult authorities and to identify any deficiencies in authority or resources which may exist The President may utilize the recourses and solicit the recomprondations of the Chemical Safety and Hazard Investigation Board in conducting such reyour At the conclusion of such raview for not later than 21 months after November 15, 1990. the President shall transmit a inessige to the Congress on the release prevention, metigation. and response activities of the Pederal Governmetit making such recommendations for change in law as the President may decid appropriate. Nothing in this paregraph shall be interpreted, construed or applied to authorize the President to modify or reasons release prevention, midgation or response authorisies. otherwise astablished by law

### (III State puthority

Nothing in this subsection shall preclude. deny or limit any eight of a State or political subdivisjem thereof to adopt ar enforce any regulation, requirement, limitation or standact One oding any procedural regularments that is more stringest limit a togeistion, roquirement, limitation or standard in effect under this subsection or that applies to a substance but subject to this enhancing

### (a) Perdodie roport

Not later than January 15, 1933 and every 3 years thereafter, the Administrator shall prepaire and gragamit to the Congress a comprehen elve report on the measures taken by the Agonby and by the States to implement the provistons of this section. The Administrator chall maintain a database on collutants and sources subject to the provisions of this section and shall luctude aggregate information from the database in each annual report. The report shall Include, but not be limited to-

(1) a suggestreport on standard-setting under subsoctions (d) and (f) of this section:

(2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categoties and subcategories;

(9) development and implementation of the rsal ional pelian atritoxios program; and

(4) recognificandations of the Chemical Sufety. and Havard Investigation Board with respect to the prevention and mitigation of accidental releases.

(July 14, 1955, ch. 950, field I, \$112, no saided Pub U \$1-504, \$4:a). Osc. 31, 1970. 34 Stat. 3685, amended Pub I. 95-95. Gile U \$5109:di(2). 110. title IV. § #01(c), Aug. 7, 1977, 91 Stat. 201, 70s, 792. Pub. L. 95-623, §12(b), Nov. 9, 1976, 92 Stat. 3958; Pub. L. 101-519, title HL 6304, Nov. 25, 1990, 104 Stat. 2581; Put. L. 102-187, Dec. 4, 1991, 105 Stat. 1285; Pub. L. 105-368, finite TV, \$400(5), Nov. 10. 1998, 112 Stat 6203; Pub. L. 106 40, §2, 3(a), Aug. 5, 1969, 119 State, 207, 200.)

#### REPRESENCES IN TOXI

The date of emeticably referred to in solven (seric), probably means the date of enactment at Pub. I., 10-405 which amended that section generally and was Approved Nov. 15, 1990.

approved No. 15, 1990.
The Alomic Energy Act, referred to in subsect (dx5), probably means the Atomic Biocopy Act of 1954, act Aug. 1, 1965, ch 124, as exist by act Aug. 25, 1955 obtions § § 8 Bast 201, and dimential, which to observed generally to chapter 20 (§ 2011 et act to the Code, acc Seart Title instelled out under section 2011 of this total conference. and Tables

The Pederal Water Pollution Control Acc, ordered to to general (a)(5) and (mk()(3)), (5)(1), (a act Jone 3), (48) (b) (5), as amended generally by thin L 83-50, 48, Oct 18, 1972, 30 Stat. 818, which is pleasified generally to chapter 30 (§1251 et seq.) of Title 33 Navigation and Mayigable Waters Title II of the Act is classified generally ally to eatchapter II (\$190) at each of chapter \$5 of Tinte 30 You complete placein carron of this Act to the Oade, see Short Tirle note set our under santion 1251 of

Tide 3) and Thèles.
The Time Schelances Control Act, referred to by onbset (kK7)(C), is Pub. D. F4-460, Oct 11, 1976, 90 Stat. 2003, as Finended, which is placefilled generally to chapter S2 (§260) to sen,) of third 15, Commerce and Track. For complete chapsilication of this 4ct to the Cots, see Short Title ness see out under section 2501 of Title 16 and Enblos.
The Pedensi Insecujulde, Punglolde und Rodentloide

Abt. referred to in subsec. (h/2)(3), geobably means the Patheral Interchala, Fouglicide, and Rodontschik Art. set June 25, 1947, ch. 125, as amended generally by Yob L. 32,515, Oct. 21, 1972, 66, Stat. 978, which is classified generally to automated generally to automated generally to automated generally. Title 7, Agricultura Fre complete classification of title Act to the Orde, see Short Totle now set out under sec-tion 185 of Tixle 1 and Tables.
The Besserve Concernation and Recovery Act. re

ferred to in subsec. (EMS::C), probably means the Re-scarce Conservation and Receivery Act of 1966, Pali, L. 94-580, Och. 21, 1916, 99 Stat. 2791, as ameraled, which is classified generally to chapter 50 (\$500) et seq., of this

costated generally to complete solders for any or this fide. For complete obsentionation of this Act, to the Code, can short little of 1976 Amendment note set out under section 6900 of this title and Tables.

The Sain Hundring Water Act, referred to in subset (mil)109, (5XD), or title XIV of 1975 July 1, 1946, as added Dea 16, 1976, Pul. L. 98 682, §27a), 85 Stat. 1890, so themselve, which is obsention generally to embelopy for the Code of the co XII (S)ME at seu ; of chapter the of this title. For com-plete classification of this Act to the Code, are Short Title note set out under section 201 of this title and

The Solid Walos Disposal Act, referred to in subsectingly, is with if or Pot. I., 25-272 Cet. 20, 1985, v9 Acar. 597, as amended generally by Pot. 1, 94-301, \$2, 004, 21. 1976, 90 Stat. 2106. Bublitle C of the Act is classified generally to subchapter III (\$600) of say ) of chapter 07 of this title For complete classification of this Act to the Code, see Short Title code set out this within

tize Code, see Short Tride able set out delive sertion sell of this tries and Califer Solder Air Act Amendments of 1995, telefred to in selection (a), (i), (ii), probably amening section 300, of Prol. 1, 301-588, which is set out below The Clean Air Act Amendments of 1990, everyment to an subset (i), (ii), (ii), probably means that for 1990, everyment to an subset (i), (ii), (ii), probably means that for 1900, everyment to an subset (ii), (iii), Stat. 3858, You complete clean Rentice of this Aos to the Code, see Short Title note set out maint section 750: of this title and Tables.

The Emergency Plazanus and Community Rights To-

Rnow Act of 1986, referred to in subsect (r)(3), is title 117.

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TITLE 42-THE PUDLIC REALTH AND WELFARE

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5[ Path. ]. 93-499, Cet. 17, 1988, 105 Stat. 1728, which is classified generally to chapter 116 (§ 1100) et seq.) of this igita. For complete Classification of this fact to the Ocide, see Short Table sate set out under souther 1980 of this table and Tables

The Googlettonal Bolety and Health Act, referred to in subset, (PRESCHIE) (E), (a), probably basels the Co-cupational Safety and Health Act of 1981, Pub. I. 91-406, Doc. 29, 1970, 91 Stat. 1980, as amended, which is classet no granelyally to chapter la 1962, et seq.) of Tielo S. Labor. For complete choosilbastion of talls and to the Code, see Abort 'Fible onte set out vicker exction 651 00 Tritle 16 and Tables

in subsect (rightfN), relatation 6LM of table 6LT subattered for "peoty-in A of bits of in this Thirted States Child" on authority of Pub L. 111 350, \$600, Jon 4, 2011, 124 Stat 3454, which Apt emented Thir st, Public Comtrapts.

Section was formerly plantified to section 1851e-7 of thia tatio

#### Arencements

1999 - Surbasec, (r)(XR)(t) Port 1, 196-40, \$215), estite\$

Sintence (eggs, Public, 108-30, §2, substituted madrical uswator -

--- ablando Lisafe (A:

he "Administrator shall consider each of the following criterts -" in tatanslowary provisions teducionated adaptas, (a) to (C) as old (t) to (U), respectively, of subject (r)(T)(f) Pub J. 168-46, \$383), added subject.

1997—Sestence (u):2:(C:, Pab. L. 105 502 substituated "On completion of the story, the secretary shall sub-mer to Congress a report on size results of the atoms west for "The Someonry shall prepare at appl reports to Congress on the status of the consumit program and

at the completion of the soudy". 1881—Survey. 1981) 1756. G. 166-181 Struck 11(19)4 Fygireger, anifologi (com ilst of political). ING-189 Struck out

1900—Pub. L. 201–549 amonded section generally, substranting prisont provision for provisions which color ed to un salesc (s), definitions; in subsect (s), list of Sanctificts air pollutants, omission standards, and pol-lution control techniques; in echano, (c), problicted acts and exemption; in subsect (s), State implianmentation and color-content; and in subsect (c), dealer, equipment.

and catalograms, and it success to a house, equipment, work propiles, and operational sandarile.

1974—Subsect (aNI): Public 25-821 alked part (b): 1977—Butsect (aNI): Public, 95-85, 890(c); substituted forecasts, or contributes to, all pollution which may consoundly be antiquipaled to result to an European in mortakity or an increase in serious brecepiles, or ona-paritation reversible. Cliness' for "may cause, or contrievers for an Judgeste on monthlity of an increase in certage erreversione, or incorporatelying reducately. If

қадына: «Аңт» Раф. С. 95-05, ф10946/42) strack рас "(except with respect to stationary sources owned or againsted by the United States)" after "implement and enforce such ebendards

Subsec (e) Pot L 85-85, §110, worked antexis (e)

### CHANGS OF NAME

Compatibles on Gringry and Corrameros of Human of Representatives treated as referring to Committee on ()-memoria of House of Registerisatives by section that ng Piah. It 184-19, set out as a note preceding section 2: of Title 2. The Congress Committee on Comments of House of Representatives changed to Committee on Erargy and Commerce of House of Representatives, and mmulication near multers recutang to secutifies and Azchanges and measure generally transferred to Corrections on Parameter Services of House of Representatyvna ny Hadan Raschazlan No II, Got Handlef Aeveztla Социтова, Јил. 3, 2001

### Якрастия Вита со 1877 амен**ди**ент

Amundment by Pub. L. 95-95 effective Ang. 9, 1917, 68 cept se otherwise empressty provided, see aection 1000) of Pub. In 15-05, set out as a note more exection refit of thne title

#### Тепыснаторы ом Вкирит ис Влослаживкое

For termination, effective May 15, 2000, of provisions. of law requiring submatted to Cangeers of may annual. acmiannus), or other regular periodic report listed in Educa Dequinant No. 105-7 (in which reports required under subsect (mX5), (rd6)(CX(b), and (s) of this section are listed, respectively, as the 8th item on page 168 the 9th Remi on page 140, 2021 time 6th fitem on page 1820, 25e escason J000 of Put. 1: 104 05, we encembed, set out as a mate uniser section J111 of Title 31, Nones and Famelia.

### Реворгал Астийка дий Редохерсное

Sules, actions, each other proceedings lawfully com-missed by an against the Administrator or any other edition or employee of the finited States in his idition. capears of in relation to the distinger of his official Capears of in relation to the distinger of his official Capears only act July 14, 1985, the Clean Air Act, as in effect innertiality guot to the wheethant of Pub. L. 93-86 [Aug. 7, 1971], not to elate by respect of the taking effect of Figh. C. 93-46, see section 406(a) of Pub. D. 85-95, set out as an Effective Dato of 1977 Amendment of the basic acts of the Act of the Capear August acts of the Act of the Capear August acts of soto tandor section 1601 of this title.

Management on Reservation of Roles, Restractions, Discours, Destaurations, Contracts, Contracts, OHIOGES, DETERMINATIONS, CONTRACTS, CONCEPT-ONTICES AUTHORIZATIONS, DECEMBER, AND HYPER Acrio:vs

All rules, regulations, orders, determinacions, edittracts, reclifications, arathorizations, delegations, arother actions doly invant made, or taken by or parenant to see July 14. 1855, the Clean Air Act, so in effect immediately grice to the date of macroscat of Pab. L. 95-45 [Aug. 1, 1977] to continue on full force and effect until modified or restinged in Mosco Experiencial hat July 16. 1955 on emercial by Pub. L. 98-85 [this chapter], see section 406[b) of Pub. L. 66-56, set out as an Affactive Date of 1977 Amendment note under section 1981 of this

### Decision flow of Authorities

Memorandum of President of the United States, Ang.

19, 1998, S8 P.R. 67297, grevided.
 Memoraphyra for the Administration of the Roving-mediat Protection Agency.

WHERRAS, the Boyleonmental Protection Agency. the againgues and deportments that are mainless of the National Response Team buildedsed mader Passocies Creer, No. 1988), 52 Ped. Reg. 2028 (1987) 142 G.S.C. 9612 exter), and other Federal agencies and Separticeatt Undertako emergency relesse preventson, militgalitos, and response activisies pursuant to various anthorities.

Proposed detay these parations to various anticontrees. By the authority vested in one as President by the Rough-Ling, and the laws of the Upped States of America, becluding section 1420/400; of the Clean Air Act (title "Act") Associon 1420/400; of title 42 of the Upped States Code, and another 90 of title 4 of the Chited States Code, and in order to provide for the delegation of exercise discounts engly the Act (42 D.S.C.) 7<del>5</del>0", et κοη.], 1 hereby:

(i) Authoriza you in coordination with egabolismani departments that are maintain of the Sational Resposse Term and other appropriate agencies and deparaments, to canduce a review of release provention. initigation, and response authorities of Federal agen-cles to order to exerce the must effective and efficient. Implementation of such authorities and to identify any doficiencies an motherity of resources that may emist, to the entract sinch review to required by westrom 112'c:((d) of the Ant; and

(%) Antiborize you, an opproximation with agencies and departments that me incurboss of the National Respiltas Team and Other Agreempriate agenties and de-

Page 6273

partimental, to prepare and ammental a pressage to the Congress concerning the release prevention telular-tion, and respectes activities of the Federal Consennant with such recommendations for observe in Law on you down appropriate, to the satural such message to requited by second 112(1)(10) of the Act

The authorsty delegated by this memorandors may be further redelegated within the Environmental Profes-Licin Ağencay

You are hereby authorized and disortal to publish tale memorandum in the Federal Newton

Withdraw J. Chambers

Remarkablem of Provident of the United States, Sau-37, 2000, 66 P.R. 3621, provided:

Memographics for the Attorney General(, ) the Admiz

Regregations for the Atthresy General, John Adminiptiting of the Printingnen La Frotestan Agency, And 
the Director of the Office of Management and Frinten 
By the authority voted in the Projection by the 
Constitution and laws of the Poised States of America, 
justifying section 1.5,950 Hz of the Clean Air Act 
Practify (48 f) \$ 6. 7420 (470 Hz), as edited by Antibo 3 of the Chemical Safety Information. Sita Security and Fuels Regulatory Relief Act (Public Law 106-40), and section 30 of title J. Ducted States Gade. I Moreby dele-

(i) the Autorney General the sutherfly vested in the President umler section H2(s)(7)(8)(fltXf)(24) of the Act to assess the impressed tisk of democrat and other prioritinal authority amorphased with the positing of off-side consequence analysis intermetion of the interne-

(%) the Administrator of the Environmental Protect tion Agency (EPA) the authority vested in the Presi-dept under section (12(rg/\(\frac{1}{2}\)(\)(\)(\))))))))) or the Act to assess the intensives created by public disclosure of off-sate consequence applysis information for reduction in

the content accidental Astransa and

(2) the Attorney General and the Administrator of
BCA, tolotly, the authority weeked in the Proceedant
under section 1120/978H((CSC)) of the Act to promptgata regulations, research these assessments, govern ing the distribution of otherte consequence uniders in-formation. These regulations, in preserval and timal form, shall be subject to review and approved by the Direcord of the Office of Microscoper t and Dudget.
The Administrator of SPA is sufficiency, and directed

to gublish this memorandum in the Petical Register.

WILLIAMS J. CELWICK.

### REPURS

Prov. (j. 1984), \$005., \$106. 5, 1999, 112 Stat. \$13, pro-

"(1) Derivation of accommend, escense.—In this anhaection, the term raceldentel release has the morning given the term to section LID/ERE of the Clean Atr Ace (42 D.S.); Telligy(2); P(2) Igodowy ok szatur op ozsazie amzerdenskych - Nos

later than 3 years after the date of enacement of this Act (Aug. 6, 199), the Comptteller General of the United States shall salumn to Congress a report on the atatus of the development of emendments to the Na-tional Site Protection Association Code for Liqueled Petroleum Gas they will result in the provision of infarmation to local emargency response personnel congerming the aff-with affects of accidental releasant of sufstances exampled from Escarg under waster 10%(r)(4)(f)) of the Clean Air Act (no added by section 8).

(8) REPORT ON COMPLIANCE WITH CERTAIN COMMING-TION SUPPLIESSION REQUESTORETS—NOT labor than a years after the date of encolment of this Act, the Compliniled Demoral of the United States shall columb to Oragressia report 12.10

"(A) describe the level of exampliance with Fedt. 20 and State requirements relating to the automission to and alone requirements remaining of the such assist to local energiticity response personnel of Information inconded to help the local energiesty response per-sonnel respond in obsenical appoints or related neve-ronmental or public health, threads; and

"(B) contains an analysis of the adequary of the information required to be submitted says the elotoway

of the inechade for delivering the luformation to Justil crosspency response personnel

#### EKKVARUATOR OF REGULACIONS

Pab. L. 106-40, §2(c), Aug. 5, 1999, 113 Bint. 213, proanded that, "The Pressient shall payerbuilt the repris-Lions promulyated under this section within 6 years she encottenent of this Act [Aug. 5, 2009] () the President dotorming not to unoraty such regulations, the President shall publish a notice in the Pederal Reg-ister stating that such reevaluation has been completed and thus a determination has been made not to annihity the regulations. Such antica ghaif include an explanation of the basis of such decision.

### Ривые Мевтиче Финис Жапителем Реплоп

Finb. U. 105-40, §4, Aug. 5, 1999, 113 Stan. 204, provided

"one in Brandar". Mos later than 180 days after the date of endotonest of this Act (Aug. 5, 1919), each purpor or operator of a stationary source povered by section 112(n)\*\*OHEX\*\*1) of the Clean Air Acc (48 U.B.C 142(x)\*\*(ABX)) whill convene a public macking, after remainsale public multiput in drile; to describe and down ones the look implications of the risk management plan submissed by the statically scaled purglant to section ( (Acc)/((Ricco) of the Glean Acc Act, inclinding a summary of the cil into consequence analysis particular of the plan. Two or more afattonary sources may conduct a joint meeting. In then of conducting such a mecoing, small business trationary sources as defined in surtion motion to a the idean Air Ant (48 ) (51) TRE(TO(1)) may comply with this section by publishy posting a summary of the offetts consequence analysis information for Users Dicility pol lever than 360 days after the empotiment in this Act. Not later than 10 morths after the flate of engarment of this Act, pack such owner e-upsentor shall suid a curtification to the danxitor of the Pederal Daresm of Investigation acading that such merting has been betu, or that such kommung has been posted, within I year provide, or within 6 months after the face of the exactment of this act. This suction ahasi out apply to sporous that employ only Program I processes Without the insearing of regulations promini-sates in the section 112 m/7k(87) of the Clear Air Act. "(b) Baroeuszawar.—The Administrator of the Bari-

consecutal Protection America may being an action in the appropriate United Brates district cours against any preson who latte or remises to comply with the regraterments of this section, and such court may essue anch orders, and take such other netions on may be account to acquire compilation with such require-

### Разк Аварамирут ами Манадружит Союнівагой

Beetlon 308 of Fub. L. 103 539 provided that

"IAI ESTABLISHMENT.-There is bacaby extentished a Wisk Assessment and Management Commission there-after referred to 50 this soction as the Commission's which whill commisse proceedings not better than 18 months when the days of emechanish of the Clean Air Act Amondments of 1990 (Nov. 15, 1990) and which shall make a full Jovetherton of the policy implications and appropriate uses of risk assessment and risk manngerment in atquilatory progentics invite vacinus Pederel laws to provide names and Other chronic homen besith effects which may result from exposure to basardous substances.

"D: CHARGE.—The Computation shall consuler-

"(1) the report of the Mathonal Academy of Sologos mathemized by section 11%) of the Clean Air act (42 U.S.C 741%), the use and limitabless of risk approximent in extentionic emission or entirent standards. ambient etandards, exposure standards, acceptable concentration levels, tolerances or other egyptonmontal contains for hispardons subsequent this grescitt e uist of exchangente effects or other chrame historia affects that the substitution of rust assertanees for such

### TITLE 62-THE PUBLIC HEALTH AND WELFARE

**97422** 

\*\*:2: the most appropriate methods for measuring and describing rander tisks or pists of other chrooks health effects (togo expanse as herealdas substances considering such alternative approaches as the life-tions that of causes or other effects to the individual ge militalicaje esset expense; tā exitátivas úrábi A source or sources on outh an autual and worst own-bases, the range of such makes, the total number of Builth effects avoided by exposure reflections, efflu ent standards, ambyert elemberie, espisieres etabli ands indeeptable concentration (weeks, interspress and other covintonicautal inductia, reductions in the cramher of persons exposed at various levels of tisk, the

Incidence of operer, and other public books makes one (3) mesbods to reflect operations in measurement and extinuation techniques, the existence of gymenyeletle on untagoulatic effects among hazardous so betaining, the accuracy of entrapolating but has health make from animal exposure that and the camanas in anguantified direct or indirect effects on hamas health it, risk ausessment spadies;

the risk namagement policy issues molacting the use of lifetime cancer vities to individuals most expect, anothers in cancer, the cost and because if cancer. stbillby of exposure reduction measures and the tow of give genetic actual exposure information in secting emissions standards and other limitations applicable to sources of exposure to hazardous substances, and 1751 and comment of, the district to which it is necessarily and comment of.

while or Coultable to develop a consistent risk necesopent inethody/keys, he is noted the sample of the penticular of the penticular and the sample our loss faithful programs.

"(a) Membership, —Such Colomission Mail: be once posed of ten members who shall have knowledge or off-

perfence to field's of tisk assessment or rock managemond including three members to be appointed by the President, two manders to be appointed by the Spankor of the timus of Representatives, one member to be ap-gainted by the Minority Leader of the Engaged Tepresentatives, two members to be appointed by the Ma-jordy Lesings of the timiste and examine to be ap-pointed by the Minority Leader of the Secreta and one muintum to be appointed by the Prosident of the Na-Heral Academy of Sciences Appointments shall be Assert to seek and rathe of sucur 80 mouth rotal root observe. ment of the Creak Air Act Americanopts of 1993 [Nov. 15.

(d) assistance from Agreeies. The Administrator of the Equiposimental Protection Agrancy and the bands of all other departments, agencies, and instrumental-ities of the executive branch of the Pederal Governmaps should to the measurable extent practicable, assist coops seed to the measurable extens good substruction as the Comprehensian in gathering such substruction as the Commission dients necessary to there out this section subject to other provisions of low "To) forest and Constants "OI for the conduct of the study required by this spotting, the Commission is such tribed to content the

succedance with Federal contract Law) with nongovernmental matrices that are competed to perform research or insectigations within the Commission's propriate, and to hold public hearings, borness, and

workshops to country built profile participation

(3) The Contrappion may appoint and far the pay
of such staff as at deems necessary in annurages with
the pravisions of this 5. Dulod States Cade The Communication may request the tempetery evaluations

of personnel from the Engineering Protection Agency at other Federal agencies. "(8) The members of the Commission who are not officers of compleyed of the Called States. While abtending conferences or meetings of the Commission or while otherwise serving at the enquest of the Chale, shall be consided to reverse compensation as a rate mut be expense of the treatment totaled pay for Director GS 13, as provided for the General Schedigle under section 50% of table 5 of the Direct States Dodg. Including triplet (Inne, and white Away from thour hames or regular places of business they may be allowed travel expenses, including per diers in item of automitance ex Anticopiand by law for persons in the

Filed: 10/25/2017

Government service employed intermidently.

(i) ESPORT —A report companing the results of all Commission studies and investigations under this sec taon, together, with any appropriate legislative econi-tectulations or administrative recommenduations, shall he made available to the public 15; comment out between 40 country when the class of enoughput of the Clean Air Act Amendments of 1890 (Nov. 15, 1890, and stall be submitted to the President and to the Congress not later them di months after such date of conotraent. In the support, the Commuserou shall make seconmenda-tions with respect to the appropriate use of sisk assess-ment and risk management to Federal regulatory pergrams to prevent concer or other chooses health alfacts which may result from exposure to hazardous out standard. The Commission shall cross to exist upon the date determined by the Colombation, but not buter than omantiss after the action was and act report righ Autzingwaties . There are nutburied to be ap

proposited and some as are ascensing to carry out the section see of the Communication satisfilling by this sec-

General investor the rates of pay for GS-16, P. Garagai or 18, or to maximum rates of gay sinter the General Schedule, to be considered relevences to rates persoble under specified scotlens of Table 4. Covernment Organiდღები იღე Bingdayers, აბი ადამის 589 (ემურ I, ტემენეს) ქ of Train. L. Jiji-549, set out in a hote tenter section 859 ni (Ciste a I

PERMIEUS ENTERMENTATION ON THE MENCURY AND AIR.
TOMOS STANDARDS RUIN

Mannocations of President of the Coltail States, 24c. 2011, IS P.O. MIZZT, prototiant
 Memoryadam, for the Administrator of the British.

Removed to the Administrator of the Environ-ineath! Protection Agency
Todus's legislate, by the Environmental Protection Agency (60%), of the Ilput Mercary and Air Tosice Standards rule for power plants (the "MATS Rule") represents a major stag forward in my Administration's efforts to protect public health and the environment.
This rule, second after careful occasionation of public

connected, presenthen at and and a duding spectron 112 of the Olean Air Act to control embassine of mercury and other toxic air pollutants from nower plants, which colbestively the sinceg the largest courses of seek pollu-ison to the (foliar) Status. The EPA estimates that by substantially replacing amendment of publishance that contribute to memorphical decrease, cancer, respondent produce rough, the through risks the MATS Role will produce rough, their brought risks the MATS Role will produce rough, theirh benefits for millions of Americans—including children, alder Americans—including children, alder Americans and Charcultus culturalida populations. Consistent with Escentive Union (200) (Improving Georgetton and Regulatory Review), the estimated braieflits of the MATS Rule für ex-aced the estimated costs

The MATS Bulle can be implemented through the nee of demonstrated, existing pollution control tech hologies. The Dunted States is a global number leader to the design such menafecture of Torax Sepheologies and it is antipipated that U.S. Grow and workers will provide much of the equipment and labor needed to used the substantial investments in pollution according

that the standards are expected to sput.
These new standards will promote the transition to a eleaner and more efficient U.S. electric power system. This system as a Whole is critical infrastructure that plage A kny roje on the Superioring of Alf lanets of the U.S. solvomy, and maintaining its stability and reli-ability is of national exportance. It is therefore choical that implementation of the MATS Rule proceed in a

cost effective modern that ensures electric reliability.

Auniques conducted by the BPA and the Department. of Energy (DOE) indicate that the MATS Rule is not anticipated to compromise electric generating resource adequacy is any segion of the country. The Clean Air Act offers a mander of implementation Registricts, and she EPA has a long and successful bissery of taking those Devillilles to ensure a amport triorition to eleanez technologiea.

\$7418 TITLE 42-THE PUBLIC HEALTH AND WELFARE

Yage 1274

The Olean Air Act provides 3 years from the effective dute of the XATS Suin for sources to comply with its regimements. In addition, section (1911/1978) of the act allows for issuance of a percett problems a source up to one additional year whose necessary for the installiation of coursels. As you started in the greamble to the MATS Role, this sublicity of fourth year should be broadly available to written consistent with the redopinione of spr lun

The RPA mas concluded that a years should generally he antimient to install the necessary embelog control analysment, and DOB has beened analysis consistent with that conclusion. While more take as generally not expented in to number, the Giean Air Act offers ather linguistant fluxibilities as well. For example, section the policy of the EFA with flexibility to uning examine late entiplicace over the course of an eff discondingent, should account concumutances write that -arguit state floribility

To actions any concerns with respect to electric tell-ability while againing MATS' points, Swalth honefite, I direct you to take the following actions:

1. Building on the information and guidance that you turns provided to the public relevant stakeholders, and permitting sutherstess in the posestile of the NAWS Role work with State and local permitting sufferities to make the substantal year for compliance with the MATE State provided under whether that (\$20K; of the Clean Air Act broadly available to sources, constalent with new, and to invoke this firstblinky expeditiously where (net/iha)

2 Promote engly, occurring ted, and enterly planning and execution of the moveures posited to implement the MATS Judy while meintaining the relability of the electric power system. Consistent with Zzerztize Ordon 1998). This process should be deplaned to impromote gue-dingtability and reduce uncontainty," and about moltide engagement and poordination with COR the Pederal Blue by Regulatory Commission, Seste utility regu-larys, Regional Transmission Geganizations, the North Arcedean Electric Refletchip Corposition and engagnal ware, to retainfile organizations, other grid planning subjections, other grid planning subjects and attent stabulaters. os appropriate.

3. Make available to the public, lacinding selemet statishydders, information cookerding any obitletysted the of Apthorities (a) under ecotion 1191((3)) in the Clears Air Act in the event shall relational raine to compily with the MATS Paris is necessary for the cosmila-tion of becomeding and (ii) under section (12a) of the Clean air Act in the event that additional time to comply with the MATS Rale is necessary to address a specompany elemented electric reliability issue. This is Corposition should describe the process for working with anxious with relevant expective to identify commentances where electric solicities concerns might fur-

sity allowing actitioned tame in comply.
This encontrantum is not intended to, and does not compte any right or benefit, eliberative or procedural opforceable at law or in equally by any party against the United States, its departments, agonores, or sottthey are nethodis, congloyees, or agents, or any other регасы

You are hereby authorized and directed to publish this me macandula in the Pederol Register

Вакаск Селола.

### § 7413. Federal enforcement

### Order to comply with SIP

Whenever, on the basis of any linkernation avaitable to the Administrator, the Administentor finds that any person has violated or is in violation of any regularment or prohibition. of an applicable implementation plan or permg, the Administrator shall notify the power. and the State in Which the plan applics of such tinding. At any time after the explication of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (aubyest to section 2002 at tatic 284

(A) assuc an autom requiring such gerseu to comply with the requirements or probibl-

tions of such play or permit.

(B) issue an administrative penalty order из accordance with sabsection (d) of this sen-

(C) being a crail artice in accordance with subsection (b) of this section.

### 12) State failure to enforce SIP or persuit program.

Whonever, or the basis of (pformation avail-Alle to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit pro-gram under subchapter V of this chapter are so widespread that such prolations appear to result from a failure of the Shear in which the plan or permit program applies to enforce the plan or permit program elfectively, the Ad-ministrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such fath ure extends beyond the 90th day after such no-Nice (90 days in the case of such permit program), the Administrator shall give public notane of smelt Conding. During the period beginning with such public notice and ending when with State satisfies the Administrator that it Will enforce such plan or permit program thereafter referred to in this section as "porust of federally assumed enforcement"), the Administrator may enforce and requirement. ar prohibition of such play or perace program. with respect to any person by—

(A) issuing an order requiring such person.

to comply with such requirement or probible

**(B**) janulug an administrative penalty Offder in accordance with subsection (d) of this section, or

(C) latinging a civil action in economics with enbeection (b) of ship section

### (3) EPA enforcement of other requirements:

Exeapt for a requirement or positiousion asforemable under the preceding provisions of this antisection, wherever, on the task of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requitement or prohibition of this subchapmen, section 7608 of this histo, subchapmen IV-A, subchapter V, or estobapter VI of this chapter, including, but not imited to, a requirement of probletsion of any rule, plan, order, waiver, or perrett promuigated, isaccó, or approved under those provisions or subchapters, or for the payment of any fee awad to the United States under this chapter to then than subchapter H of

this chapter, the Administrator may—
(A) issue an Administrative penalty order in Ambodenco with enbasction (d) of this sec-

(B) thrae an order regulating such person to comply with such requirement or prohible t: on .

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# REGULATORY PROVISIONS



### Pt. 67, App. A

local agent, any noncompliance yeualties owell by the source owner or opemitor shall be rated to the State or Jocal agent.

### AFPENDIN A TO PART 65-TERRADOAG **Зпресва Препулят**

North SPA will make copies of appendix A evable-in frame (itractic, Statementy Source Compliance Division, KN-Mi, 1920 Fenneyl-vania Ave. NW., Washington DC 2000.

154 PK 85039, Jame 80, 1969

### Appendix B to Part 67: Instruction MARKAL

Nova EPA will make copies of appendix D available from Tark-the, Statishary Bource Compliance Division, RN-90, 150 Pennsylvanie Ave., NW., Waaldington, DC 20101.

(54 PR 30280, June 70, 1989)

### Апрякору В то Рака СТ Сомицави. PROGRAM

North RPA will make captes of appendix C assignable from (tarenties, fitationary Botton Compliance Division, KN-W), (200 Pennsylvania, NW., Washington, DC 2008.

[54 PR 25250 Jame 50, 1909]

### PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

### Subport A—General

Sec

08.1 Scope.

SBS Definitions. SB to Applicability. SB to General requirements.

9815 Management

### Subport B—Hozard Assessment

59.20 Applicability.

58.22 Official consequence analysis param-HLATM

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SB 30 Defining official impacts—population °C30 Thefymung officials (impacts—on/iron-

gyat, 58-35 Beylew and options 58-39 Decommentation, 58-42 Flow-year accident bistory.

### Subport C Program 2 Prevention Program

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68.50 Historial review. 36 53 Operating procedures. Training

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### 40 CFR Ch. I (7-1-17 Edition)

ERGS Compiliance nuclics.

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### Subport D--Program 3 Prevention Program

40.65 Personal could be information.

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GB,YL Tissining

GE, WJ Machaelical internativ

Management of change

58,77 Pre startop raview. Compliance accito. 38.70

Taltebesting auders.

49.80 Incidents investigation

6KA9 Imployee participation Hot wick permit

60 UZ Сопущелета.

### Subport E-Emergency Response

86.99 Applicatality

56 P. Emergency response enord; nation ac-

Li elfacsi.

48 %» Егретуевар поприное реокульных

### 68.96 Егдендегілің геарошға өкелонас.

### Subspart F—Regulated Substances for Accidental Release Prevention

SR.106 | I'mpose SR.115 | Threshold determination SR.126 | Pedition process 88.125 | Exampliana.

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## Subport G—Risk Monagement Plan

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97 (3) American of charms of containable business andormatica

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иялия — Себя не солинциянии виссумия

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65.131 Erangercy responte program.

Coutification 02.165

### Subport H--Other Regularments

64 201 Bacardkauping.

68,800 Availability of Information to the gable:

68.215 Fermit content and all permutation nuthorsty or designated agency regular-[[[

MI XXII Audilla.

APPRHORM A TO FART 68-TABLE OF TOXIC Strimeolities.

антипанту, 42 О.S.С. Тегбен, 9801(x);11: TOTAL-CHARTS

9 68.3

Socrace, 50 PP, 1395, Jan. 31, 1994, unless utbetwiese mated

### \$ubport A--General

### ă68-1 Scope.

This part sets forth the list of regulated substances and thresholds, the patition process for adding or deleting substances to the list of regulated authorisance, the requirements for owners or operators of scattenary surrece concerning the prevention of scotlental releases, and the State Additional releases prevention programs approved under section 112(r). The list of substances, threshold quantities, and addidnt prevention regulations providested under this part do not limit in any may the general duty provisious under section 112(r,41).

#### ♦##3 Definitions

For the purposes of this page:

Anytherful valuese means an immentanpailed emission of a reputated substance or other extremely hazardous substance into the ambient air from a stationary source.

Act means the Cinum Air act as amongled (48 V.S.C. 7000 cr.seq.):

Administrative controls their written protectional mechanisms 0866 for hazard controls.

Administrator means the administrator of the U.S. Environmental Prolection Agency.

AICHEVOPS means the American in-

AlCheAUGAS means the American institute of Chemical Engineera/Center for Chemical Process Safety.

AP) means the American Patroleum. Institute.

After the aits a manufactured Item, as defined under #8 CFR 1910.1200 b), that is formed to a specific shape or design during manufacture, that has end use functions dependent in whole or in part upon the shape or design during and use, and that hose not resease or otherwise result to exposure to a regulated substance duder normal conditions of proceeding and use.

ASME means the American Somety of Maghanical Engineers.

CAS finans the Chemical Abstracts Service.

Catastrophic referse means a major uncontrolled emission, fire, or explication, throlying one or more regulated

autetances that presents imminent and substantial endangerment to public health and the environment.

Chastified information meets "Classified in fine Classified information" as defined in the Classified Information Frenedures Act, 16 U.S.C. App. 8, zection Italias "Any information or material that has been determined by the Hulled States Government (mystaric to an exceptive order, statute, or regulation, to require protection against unauthorised direction are for reasons of national security."

Condensage means hydromathen liquid separated from matoral gas that condenses due to changes in temporature, pressure, or both, and remains liquid at seandard conditions.

Concred process steems a process that has a regulated substance present on more than a threshold quantity as determined under \$48.115.

Cross of means any naturally unconring, unrefined petroleum blocht.

Designated agency means the state, local, or Federal agency designated my the state under the provisions of \$68,2194).

DOT minutes the United States Detestiment of Transportation

Frottonmental receptor insule natural screen such as national or esale parks lurests, or monoments; officially destinanted widdlife salectication, preserves, pringes, or areas, and Federal wilderness areas. That would be exposed at any time to take concentrations, radiant heat, or overpressure greater than or equal to the endpoints provided in fe8 29(8), as a result of an accidental release and that can be identified on local U.S. Goological Survey maps.

Pholic car means gas extracted from a production well before the gas enters a material gas processing plant.

Not some means work involving chrotrip or gas welding, coating, brazing, or similar flams by spark-producing opersalors.

Supiestericity agency means the state of local asency Man obtains deleasion for an accidental release prevention for an accidental release prevention for an accidental release program under subpart E. 40 OFR part 52. The implementing agency may, but is not regulard to be the state or local air pormitties agency. If no state or local agency is granted delegation, EPA will be the implementing agency for toat state.

Filed: 10/25/2017

### **§68.3**

Injury mesons any officer on a journey that results either from direct exposure to toxic concentrations; radient heat; or overpressures from nondental releases or from the direct con-sequences of a vapor closed explosion reach as flying glass, detris, and other projections from an acetdental release and that convices medical treatment or heaptigites tion.

Magur change mount introduction of a new process, process equipment, or resulated substance, an alteration of proc ess chemistry that results in any change to safe operating limits, or otijne alteration tizat zobrođuće a new bayard.

Mechanical integrity theatis the proceas of enduring that process equipment is fahr/cated from the proper materials es construction and is properly an stalled, maintained, and replaced to rea listmebibble luna serullah Anevara Louses

Medical Interment ciesus treatment, other than first ald, administered by a physiciam or registered professional personnel under standing orders from a physician

Michaelum en militariam sustem means Specific actualties, sectionologies, or equipment designed or deployed to capture or control substances again loss of containment to monumise expassive of the public or the environment. Passivo nstrigation means equipment devices ar tenhnologies that function without human, mechanical, or other energy Impor, Accier mitigation means equip ment, devices, or technologies than need human, mechanical, to other ereugy imput to function

NAICH means North American Industry Classification System.

NEPs mount the National Flor Prorection Association.

Notorial yas processing plant (yas plant). ni begagus otic grissecong yan susan the extraction of mathetal gas lequids from field gas, fractionation of mixed natoral gae (iquids to natura) gas proilupte, or buth, classified as North American Industrial Classification System (MARCE) ands 21:112 (previously Standard Industrial Classification (SIC) node 158D.

Offinite measure works 1400000 the property boundary of the stationary source, and areas within the property hound

any to which the public last couting and unrestricted access during or ourside bioxidees hours.

OSHA means the U.S. Occupational Sziety ann Health Administration. Owner of operator means ally person who owns, isoses, operates, contitues, or supervises a scattenary source.

Petroleum refining process usut mouns a process until med in an establishment primartly engaged in petrolecta reforing as defined in NA2CS code 2200 for petroleum reflaing (formerly SLC orde 2911) and used for the following Producting transportation field (such as gascline, diesel fuels, and jet fixels), braiding lughs (such as kercseno, fue) gan distillate, and feet offs), or lubricauta, Saparasing pelnoteoni: or Samerating, tracking, reacting, or reforming parermediace potroloum streams. Examples of such units include, but are rxis limited to, pestoleum based solvent anita, alkwistion unita, catelytic hydentroating, cotallytic hydroretining. catalytic hydrocracking, catalytic reforming, escalytic pracking, condectigtillation, lubs oil processing, hydrogen poedizeelan, isomerizasiaa, polymerizabloo, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process muite include selfur placts.

Population means the public.

Process means any activity Livolving a regulated substance including any use, storage, manufacturity, bandling, or on-site movement of such substances or combination of these activilacs. For the purposes of shis definition, any group of vessels that are Interconnected, or acparate vessets thet are located such that a regulated substance could be involved in a potential release, shall be considered a singia process.

Produced mater months writer extracted from the earth from an off or natural gas production well or that is separated from oil or natizial gas after extraction.

Aubit incurs any person except emplayees or confractors at the stastonary source.

Publik versplot means offstod reald-mo≈, foetitations (e.g., schools, hos pitals), ludustrial, commercial, and oftice muldings, parks, or repreational areas innahited or occupied by the public at any time without restriction by the stationary source where members of the public could be expreed to taxic concentrations, radiant least, or everyosseeps, as a result of an accidental raises.

Regarded subspaces to any automate the listed pursuant to section 115(r)(8) of the Clean Air Automatemented, in §68.150

Replacement in kind means a replacement that satisfies the design specifications

Retail family means a stationary source at which more than one-half of the manner is otherwise to end marks or at which more than one-half of the field sold, by column, he said through a cylinder exchange program.

RMP means the risk management plan required under subject G of this part.

Spattemany source means arry buildings, structures, equipment, installa-Mone, or enbetwice emitting stationary activities which belong to the same industrial group, which are located on one or innue configuous properties, which are under the control of the switte persons (oir persona carden common. control), and from which an accidental release may occur. The term sta-Margary someon does not apply to transportation, including storage inclaint to transportation, of any regulated sabstance or any other extremely hosardgas substance under the provisions of this paid. A stationary source in-Cosh erapidation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary. source for josting or unloading, 'Fransportetion includes, but as not limited to, tamapartaston subbed to oversight or regulation under 49 CFR parts 192. 193, or 195, or a state natural gas or hazardone liquid program for which the atate mas in effect a contilleation to DOT under 49 U.S.C. section 86105. A stationary source dues not Include date arally accurring hydrocachen reservoirs. Properties shall not be considered contagnable solely because of a dealfroad on papeline right-of-way

Threshold quantity means the quantity specified for regulated substances

pursuant to section 113/r)(5) of the Clean Air Act as amended, histoid in \$58,190 and determined to be present at a stationary source at apposited in \$68,215 of the part.

Typical migrantingual continuing means the hemperature, which speed, cloud cover, and atmospheric stability class. Distanting at the site based on data gethered at or need the site or from a board masserplayical station.

Vesrel means any renesse, tank, druza, barrel, cylinder, van, krettle, boiler, night, hose, oy other container.

Whitz-chas release means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in \$68.23(a)

[39] F.N. 4480, Can. dl. 1594, us smerided as 61 FR. 30117, Julia 32, 1846, 61 FR. 844, Jun. 6, 1990; 64 FR. 179, Jan. 6, 1899; 61 FR. 2886, Mar. 12, 2006.

Bessettek Data Nors: 21 01 PR 9696, Jan. 32, 3683 was assembed by adding the definitions for "Arbyes measures", "DBI", "Integrable extent acousties", "Practicehility", "Practicehility", "Practicehility", "Root etmas", and "Third-party annut," acticitive Mar. 14, 201 Third-party annut," acticitive Mar. 14, 201 Third-party annut," acticitive Mar. 14, 201 Third-party annut, "S. 2017, this assembrash was forther delayed until June 13, 2017, At 32 FR 1303, Mar. 15, 207, this assembrash was forther delayed until June 13, 2017, At 32 FR 1313, June 14, 2017, this assembrash was further delayed until Pet. 19, 2018 For the occasionness of the over, the added text is set forth at fill lower.

1683 Pelipitians

Active measures mean time management forestates or engineering controls that beigg an mechanism, or other energy imput to detect and respond to process deviations. Entangles of notive measures include narray, safety instrumental systems, and detection hardware (such as hydrocenter sensors).

C3/ menna coufidential basiness information

Inherently only inclinating at disign makers that management measures that management includes substances, substitute less have done substitutes, modernes the management in the management of the management in t

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Filed: 10/25/2017

### \$68.10

of regulated valoramees, or almutify invered powerses in order to make accidental releases less likely, or the impacts of each toleases has accord.

. . . . . .

LESC mesne (visal emergianos planains comportires as establishad under 42 U.S.C. 1166/ret.

. . . . .

Paperty countries mean risk management message within the Brognomy of consequent of the lazard without burner, mechanical or other ententy mout. Examples of people meanures to fluid preserve vessel designs, dikes, terms, and blook water.

. . . . .

prophysiology means the capability of being supposedly accomplished within a reasonable tame, aromanting for economic or, envisous mental, tegal, social, Austrehmylogical factors. However, and lactode couplings on premium temperatures risks for new risk reduction measures.

Provideral management measures such as policies, spaceting procedures, mainting administrative controls, was emergency response actions to prevent or taining the moldents.

, . . . .

Most make means of fundamental, underlying, system related reason why an incloud occurred.

. . . . .

Mand-party budit means a compliance might conducted proposed. So the introductions of \$88.00 performed or led by an entity (ladinoduct) in front meeting the competency and independence described in \$88.38(c) or \$60.00c.

. . . . .

### 588.10 Applicability.

(a) An owner or operator of a stationary source that has more that a threshold quantity of a regulated substance in a process, as deservated under §68.115, shall comply with the requirements of this part on later than the latest of the following dates.

(t) June 21, 1989.

- 42) Three years after the date on which a regulated substance is just. linted under \$68.190, or
- (3) The date on which a regulated substance is first present above a threshold quantity in a process.
- (n) Amgram I disjunctly requirements. A covered process to alighbe for Program I regularence; as provided in \$68.12(b) If thesets all of the following regular-modus:
- (II For the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where expande to his substance, its reaction products, overpressors generated by an explosion involving the substance, or radiant here generated by a Cu) involving the substance led to any of the following offsital.
  - (i) Death;
- (ff) injury; or
- (iii) Response of restauration autivities for an emposors of an environmental density;
- (2) The distance to a toxic or flatemable endpoint for a worst-case release assessment conducted under subpart B and \$68.25 in less than the distance to any public receptor, as defined in \$68.50; and
- (i) Emergency response procedures have been coordinated between the six throaty source and local emergency planning and response organizations.
- (c) Program: 2 eligibility requirements. A covered process is subject to Program 2 requirements of it does not more the eligibility conditioned a distance paragraph (d) of talegraph (d) of this s-otion.
- (d) Program 3 eligibility requirements. A covered process is subject to Program 3 if the process does not meet the requirements of paragraph (b) of this section, and if either of the follewing conditions is met;
- (1) The process is in NAICS code 2211 2241, 28511, 22511, 22518, 22518, 22518, 32521, 325311, 07 32582; cr
- (2) The pioness is subject to the OSBA process safety passessement etaildard, SCOPH IBIU.IIP.
- (e) If at any time a covered process no langer meets the eligibility uniterial of its Program level, the owner or operator shall comply with the requirements of the new Program level that

applies to the process and update the RMF as provided in \$40.180.

(i) The provisions of this part shall not apply to an Onter Continental Shall ("QCS") source, as defined in 40 CFR 95.2.

(&) FR 81717, June 30, 1996, se amended work) RR 866, Jan. 6, 1988, 64 FR 979, Jan. 6, 19991

EFFECTION DATE NOTE: At 88 7.5 499t. Jan. §68 to was amended by redesignating paragraphs (b) through (f) as paragraphs (f) (фрицей II), гастниц расоворфия (в) асл пом ратоктара (ОЗ) эте! энф/пк лем тогоновайм (ii) through (a), colorative Mnc 14, 2017, A5 U/ Pfc 8460, Jaco, 28, 2017, this ensemblests was quick Mac (21, 2017, At 62 F.2, 1368, Max, 16, 2017, this amoudment was faither delayed antil June 19, 2013. At k2 FR 27138, June 14. 2017, this americant was further delayed until Pet 19, 2019. You the convenience of the user, the added and rovised tout is not loztii Ak Ĵálliiwa

#### 468.19 Applicability.

- (a) Except he provided in paragraphs (b) through terral sale section, an evener or operator of a stationer, usually of a regulated substance in a process, we determined under \$65,015, about compay with the reguliersents of this part no later than one lected of the following dates:
  - (L) Jane 21 1999:
- (2) Thise years after the face on which a regrateful substance or first listed under 908,150:
- (3) The date on which a regulated subgrance is first present above a threatical magnitive in a process 65
- (6) For any surfations to this part, the effective date of the Otal rule that reviews this
- 114 By March 14, 2008 the owner or operator of a stationary source shall comply with the emengency pagonen operdination activities Ja. 663.69
- (c) Within three years of when the owner ar agerator determinas tims the stationary ecomie is ealigned to the enjuryeous response program requirements of \$86.0, pursuant to 668.90(x), the ewater or agereter must develop general, one example of Systems response pro-gram in accordance with \$68.90 (4) 18: Meich 14, 120, the document of Systems ages shall comply with the following provi-
- alden prometynasol on January 55, 1977 (ii) Third party audit provisiona in genesa(ii) measign (88,58)h), 68,59, 68,7910 63 19(e), 49, 58(2), and 44 (0);
- (2) Incodent Investigation root cause analysis provisions in \$68.50(001) and \$68.50(000). (8) Bailer technology and albeigatives abalyera provietora (ភ.៥**៩** ស៊ី(c)/5);
- 14) Втогдерду гектогин ижкатын разуйным Of \$88,96, ne.0.

(5) Avai(ability of information provisions la (68,210(b) through (c).

Filed: 10/25/2017

- (a) By March .4 2002, the ewoer or operator shell comply with the risk management plan provisions of subpart & of this own promulgated on Japuary 19, 2017.
- (\$) The distance to a function flagsmostle. caliporatifor a worst-case release accessment onudromed ander subpart 8 kad 508 25 is less than the distance to any public receptor, as deficied in \$600; and

### §88.12 (Recept) requirements.

- (a) Deneral requirements. The owner. or operator of a stationary source schpost to this part shall enhant a single HMP, as provided in 6968,150 to 60,150. The RMP shall include a registration than reflects all covered processes.
- (b) Program ) requirements in addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stattonary source with a process eligible for Program 1, as provided in §68.10(h), shall:
- (1) Analyse the worst-case release scenario fot the procoscos), as providod in §68.25, document that the newcest public receptor is beyond the distance to a texte or Summatte endpoint dofined in \$60.22:81, and softmit in the HMP the worst case release scenario us provided in §65.265;
- (8) Complete the five-year accreent Marany for the process as provided in \$68,42 of this part and submits !t in the RMP as provided in \$68,158.
- 13) Ensure that response sottons have then countinated with local emergency planning and response agencies; and
- (4) Southly in the TAMP the following "Based on the criteria in 40 CFR 68.16. the distance to the specified endpoint for the worst-case applicantal release scensific for the following process(es) is icss them the distance to the measest public receptor [list processins)] Whit-In the past Ove years, the procession has thave bud no neudental release taat caused offerse limpacte provided in the risk management program rate (4) GFR 68 16(byl)). We additional measarea are necessary to prevent offeits nl saanelet (streetievs room etongmi las event of fire, explosion, or a retease of a regulated substance from the processiss), softly within the distance to

### \$68.15

ment was until Mar 31, 2019. At 62 PR 13868.
Mar 16, 2011. Use accordance was further do
typed captil Jupe 19, 2017. At 80 PR 2013 Juse
14, 2017. It is amendment was further delived
until Pek. 10, 2019. Per the convenience of
the gree, the added test to set forth as Ini-

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ger to putthe emorgency responders. Therefore, public emergency responders should not onto this area expendence stranged with the emergency content indicated in the RMP. The understand certifies that, to the best of my knowledge, information, and belief, turned after reasonable inquiry, the information robusted is true, accurate, and complete. [Signature table, date signatal)."

the agenthed endpoints may pose a dan-

(i) Pringram 2 requirements. In addition to involving the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a princess subject to Pringram 2, as provited in \$68.18(c), shall:

(1) Develop and implement a management apetage as provided in §68.15;
 (2) Geodern a hazard assessment se

(8) Go)which a hassed assessment as provided by 陽 88.30 through 68 42;

- (8) implement the Program 7 prevention steps movided in \$58.48 shrough 88.80 or implement the Program 3 prevention steps gravided to \$88.87 shrough 68.87.
- (4) Develop and implement an emergency response program as provided in 1968-90 to 53.95; and
- (5) Submit an part of the RMP the data on prevention program elements for Program 2 processes as provided in \$48,170.
- (d) Program 3 rejumements. In addition to meeting the requirements of paragraph (a) of this rection. the owner or operator of a stationary source with a process applied to Program 8, as provided in \$50.10(0) \$bs0;
- (t) Develop and Implement a management system as provided in §60.15;
- c2) Conduct a hazard resessivent as provided in \$6.88.20 through 68.42;
- (3) Implement the prevention requirements of \$168.65 through 68.87;
- (4) Develop and implement an emergency response program as included in §§63.90 to 85.95 of this part, and
- (a) Submit we paid of the BMP the data on prevention program «Jaments (b) Program 3 processes as provided in \$48,175.

### (6), FR 31718, June 29, 19961

Establica Datis Note: At 63 Ph 4826, Jan. 13, 382,12 was amended by revising paragraphs (1)%, (5), (due) and (5) and dediting paragraphs (1)% and (due) and (4)(6) and (4)(6). Ma. 11, 207. At 37 PR 949. Jan. 31, 307. At 3 amended

489.18 General requérandate

(c) This (d) (Symphosite managness softence with Mask) emorteness planning and pergonal agencies as growthed is ∮00 93;

(5) Develop and implement an ani-ing-incy response programs, and conduct exercises, sa provided in §588.98 to 69.66, and

(6) Submit as grat of the RMP the data on prevention program elements for Program S processes as provided in \$69,170.

(H)

(i) Guardizate response netions with local emergency planning and response agreems as provided in 66:53

Of Develop and Implement on emergency majorise programs, and conduct exercises, as provided in \$125.50 to \$0.96, and

(e) Submit as part of the RMF the data on prevention program elements for Program 3 processes as provided in §68,175.

### 168.15 Management.

- (a) The owner or operator of a stadionary source with processes subject to Program 2 or Program 3 shall develop a management system to eversee the implementation of the risk management program elements
- (b) The owner of operator shall assign a qualified person or position than has the overall responsibility for the development, implementation, and literation of the risk management program elements.
- (a) When responsibility for implementing individual requirements of this part is assigned to persons other that the person identified white paragraph (b) of this section, the names or positions of these propin shall be considered and the lines of authority defined directly an engagisation chart or similar document.

### [63 FR 13718, JPane 20, 1956]

### Subport 8—Hazard Assessment

Southern, 61 FR 31733, Some 50, 1996, unless otherwise policie.

\$68.25

### SUBJU Applicability.

The owner or operator of a stationary source subject to this part shall prepare a worst-case release surnamo analysis as provided in §00.25 of this part and complete the five year acculent Planory as provided in §68.42. The owner or operator of a Program 2 and 3 pricess must comply with all secclone in this entrywer for these proc-Benke

### FOR 22 Offsite econoquence analysis (Managed Sec.)

- (a) Endpoints. For analyses of offsite. consequences, the fellowing endpoints ehall de used:
- (J) Taxios, The toxic subpoints are-
- vided to appendix A of this part (2) Flatiniables. The endpoints for flaminables vary according to the soenacioa asudted:
- (i) Explosion. An overpressure of I Jou!..
- (ii) Radians heat/exposure time. A radiant heat of 5 kw/m2 for 40 seconds.
- (III) Lower flammability limit. A lower flammability limit, as movided in NFPA documents or other generally rezvigo land nources.
- (t); Witth speed/atmospheric stability class. For the worst-case release analyets. (E0 award or operator shall the A wand speed of LS meters per second and W atmosphoric stability class. If the owner or operator can demonstrate sadiga alab lagigological data applicable to the stationary source show a higher minimum, wind speed or less stable atmosphere at all times doring the previous tirree years, those minimums may be used. For analysis of alternative scenarios, the owner or operator may use the typical melecrological conditions for the stationary source
- (c) Amblect temperature/ambiffy. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use the highest duily maximum temperature to the previous three years and average hundring for the site based on temperature/hundsity data guibered at the etationary source or at a local meteorological station: sa owner or operator using the RMP Offsite Consequence Analysis Guldance may use 25 °C and 50 percent hamidist as values for these variables For analysis of alternative acenarios.

the owner to operator may usw hypacal compensature/humbdilty data exabered ac She stationary source or at a local mehespological statum.

- (A) Height of release The worst-case spinaledge pixon horsinger a la casaley shall be applying assuming a ground level (0 feet) release. For an atternative scenario analysis of a regulated fixic substance, release height may be determitted by the release econatio.
- (a) Springs roughness. The owner or larur or maddu needlie ean linds notarego впродтарлу, из арргоризате 11rbsm means that there are many obstacles in the immediate area: obstacles include buildings on trees. Rural means there are do buildings in the immobile to area. good this serrain is generally flat and unabatimeted.
- (O Dense or nearthally bodyant gales. The owner or operator shall ensure that tables or models used for disporsion analysis of regulated made sabstances appropriately account for gesdenelty
- 18: Temperature of released auto-stance For worst case, maids other than gasea liquified by refrigeration anty shall be considered to to retrased at the highest daily maximum toinperacers, hased on data for the grovions three years supropriate for the etasianary edubed on At process tem perature, whichever is higher Par alternative scenarios, substances may be considered to be released at a propess or amblent temperature star is appropriate for the scenario.

### \$65.25 Worst-case release wangrin emailysis.

- (a) The owner or apprintor shall shalyse and report in the RMP.
- (1) Уот Риприят 1 ргогезава, оде worst-sase release economic for each Program I process,
- (2) For Program 2 whit 3 processes:
- unanes escolar acceptance of the that is estimated to orests the greatest distance In any direction to an endpaint provided in appendix A of this pack resulting from an neglicental re-lease of regulated toxic substances from covered processes unifor worseoree conditions defined to \$60.20;
- 131) One worst-case release acemanto that is estimated to create the greatest

Filed: 10/25/2017

### 968.25

distance in any direction to an endpoint defined in §68.230 resulting from an assistant allease of regulated Cammable substances from covered proccises under warst-case conditions defined in §68.22, and

- (III) Add.u/oppal worst-case release scenarios for a hasaid class if a worst-case release from another covered process in the shadonity source potentially affects polentially affected by the worst-case release someans developed under paragraphs (a)(2)(1) or (a)(2)(1) of this section.
- (b) Determination of morel-case release grantity. The worst-case release quantity shall be the greater of the foltowing:
- (i) For substances in a vessel, the greatest amount held in a single vessel, swing into appoint administrative controls that limit the maximum grancity; or
- (2) For authorances in paper, the greatest amount in a paper taking into account administrative controls that limit the maximum quantity.
- (c) Worst case release scenario—term cases. (i) For regulated surice substrations that are normally gases at unstient temperature and hardled as a gas or as a liquid under presented the owner or operator shall assume that the quantity in the tossel or page, as determined under paragraph (h) of this section, is intersed as a gas over 10 minutes. The follows rate shall he escaping to be the total quantity divided by 10 unless passive minigation systems are in place.
- (2) For gases handled as refrigerated liquids at ambjeut possible.
- (i) If the released substance is not contained by passive milityation systems or if the contained pool would have a lepth of long to test, the owner or operator shall assume that the substance is "Sienzed as a gus in 10 full-ates:
- (ii) If the released substance is contained by passive mistigation systems in a pool with a depth greater than I can the ewig or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled unstantaneously to form a liquid pool. The volatilization rate (release (508) shall be called.)

culated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section.

- (i) Worst-case release scenario -tamo figuids (1) For regulated finate substantion that are nacently lequids at ambient temperature, the owner or operator shall assume that the quantity in the vessel or pipe, an determined under patagraph (b) of this section, is spolled anaturaneously to form a liquid pool
- (a) The surface area of the pool diskills: determined by assuming that the liquid agreeds to I centameter deep enters passive instignation agreems are in place that serve to contain the split and limit the surface area. Where passive integration is in place, the surface area of the contained liquid shall be used to entertained the volatilization page.
- (h) If the tolease would occur onto a surface that is sub-payed or smooth. the owner or uperator muy take into account the actual surface rhogarteristics.
- (2) The relatification rate shall exceunt for the highest during maximum temperature, occurring in the pass three years, the bamperature of the substance in the vessel, and the concentration of the substance of the liqaid spilled is a mixture or solution.
- (3) The rate of release to all shall be Jetermaned from title Volatilization rate at the liquid posi. The owner or operator may use the methodology in the RMP Offsite Ennsequence Auglysis Guidance of any other publicly available techniques that account for the madeling conditions and sile recognitival by industry as applicable us part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or apetator allows the implementing agency access to the imodel and decertibes model features and differences from publicly available models to local стощогоў різапств прав годионь.
- (c) Wood-case misate economic—founmains gones. The number or operator shall sesume that the quantity of the substance, as determined under paragraph (b) of this section and the provisions below, vaporizes resulting in a Paper cloud explosion. A yield factor of

10 percent of the evaluable energy retegors in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TET equivalent methods.

- (1) For regulated flammable substances that are normally gases at ambient temperature and handled as gases as liquid under presents, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The total quantity shall be assumed to be involved in the vapor should explusion.
- (2) For flammable gases handled us refrigerated liquids at ambient prossure:
- (i) If the released substance is nonconstanted by passive militarious systems of if the contained pool would have a depth of one continuer or less. the owner or operator shall assume that the total quantity of the substance is released as a gas in 10 minotes, and the total quantity will be involved in the engage cloud explication.
- (11) If the releazed substance is congained by passive mitigation systems my a prof with a depth greater than I centiciater, the owner or operator may assume that the quantity lit the vessel or pipe, as determined ander yansgraph (b) of this section, is splitted instantaneously to form a liquid pont. The valutilization rate (Polonsy rate) shall bo catentated at the boiling point of the substance and at the conditions apostfield by maragraph (d) of this section. The owner or operator shall assume that the quantity which recomes vapor in the first 10 minutes is luvolved (A ςθε **ναροτ είπως επρίωπο**π.
- (f) Worst-case release sections from mable liquids. The owage or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section and the prostelons below, vaporases resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy teleased in the explosion shall be used to designific the distance to the explosion spajorit if the model used is hared on TNT equivalent methods.
- (i) For regulated frammable substances that are normally Double at ambient temperature the owner of op-

enator shall assume that the entire quantity in the vessel or pipe, as determined under paragraph (h) of this section, is spilled instantionaristy to form a liquid pool. For liquids at temperatures below their abmostback boiling point, the volubilization rate shall be calculated at the conditions specified in paragraph (d) of this section.

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- (2) The owner or operator sont: as eame that the quantity which becomes vapor in the first 10 minutes is involved in the vapor cloud expidetion.
- (g) Parameters to be applied. The owner or operator shall use the pasametecs defined in §68.23 to determine distance to the endpoints. The owner or operator may use the methodology provided in the HMP Offsite Consequence Analysis Guidance or any commenoldDy or publicly systiable att dispersion modeling techniques, provided the tochniques account for the modeling conditions and are recognized by undustry as applicable as part of current practices. Proposetary models that account for the modeling conditions may be used provided this owner or operator with we the implementing agency access to the model and describes model feawires and differences from priblicity avariable models to local emergency pianners upon request
- (h) Consideration of pagetes milijotion. Passive intiligation systems intiligation systems intry be concluded for the shallysis of worst case provided than the mulgation system is expable of withstanding the technique event triggering the technique would still fanction as intended.
- (i) Factors in selecting a worst-cuse scenario. Notalthetending the provisions of paragraph (b) of this section, the awarer or operator shall select as the worst case for flammable regulated substances or the worst case for regulated toxic substances, a secuario hased on the following factors if such a security would result in a greater distance to an endpoint defined in §68.22(a) beyond the stationary source boundary than the scenario provided under paragraph (b) of this section:
- Smaller, quantities handled at higher process temperature or pressure; and

### \$ 68.28

- (8) Proximitty to the boundary of \$15 stationery source.
- [6] FR 31718, Jone 20, 1986, se amended at 05 PB 38700, May 25, 1999;

### §68.28 Alternative velease scenario analysia.

- (a) The number of scenamos. The owner or aperator shall identify and analyze at least one alternative release specially for each regulated texts substance held in a covered processies and at least one alternative release ecenatic to represent all transmatic substances held in covered processes.
- (h) Seconder to consider (l) For each scenario regeled under paragraph (a) of this section, the owner or operator shall select a scenario;
- (i) That is more likely to each than the worst-case release segments under §68.25, and
- (ii) That will reach an endpoint offsite, unless no such scenamo exists.
- (2) Release scenation considered should include, but are not irrated to, the following, where applicable:
- Transfer base releases due to splits or sudden base appointing;
- ([1]) Process piping roleages from failures of flanges, joints, welds, volves and valve seeks, and drains or bleeds;
- (tit) Process "esset or pump televiet due to crocke, eval failure, or drain, hierd, or plus fallure; (tv) Vessel overtifing and spill, or
- (tv) Vessel overtifting and spill, or overgressurisation and venting through reisel valves or maptors disks; and
- (v) Shipping offerships pusherships and breakage or puncturing leading to a spall
- (a) Parameters to be applied. The омини от орвгазит вбалл изе the арресprisse parameters colined in §68.22 to Secondine distance to the codpoints. The paner or optimion may use either the methodology provided in the RMP Offsite Consequence Auslysis Guidance or any commercially of publicly available ate Ausperaton modeling rachniques, provided the techniques account for the specified modeling coulfblons and are recognized by industry as applicable as part of corrent practices. Proprietary inodels that incount for the modeling conditions may be used provided the award or operator allows the implementing agency access to the model and describes model features and

- differences from publicly available models to local emergency planners upon remeet.
- (d) Consideration of initigation. Active and passive initigation systems may be considered provided they are canable of winkstanding the event that triggered the release and would still be functional.
- (a) Factors in activity scenarios. The owner or operator shall consider the following in selecting alternative release scenarios:
- (1) The five-year accident history provided in §68.43, and
- (2) Fallure sconazios identified under §68.50 or §68.67.

# 668.30 Defining offsite impacts—population.

- (a) The Owner or operator shall estimate in the RMP the population within a circle with its center as the print of the rolease and a radius determined by the distance to she endpoint defined in § \$6.22(a)
- (b) Pointinion to be defined. Population shell include residential population. The presence of Institutions (schools, hospitals, prisons) parks and recreational areas, and major connection, office, and industrial buildings shall be noted in the RMP.
- to) Data sources acceptable. The owner or operator may use the most recent. Census data, or other updated information, to estimate the population potentially affected.
- (d) Level of ucry(acy, Population shall be self-mated to two agaifficant digits.

#### §66.30 Defining offsite impacts—envimental.

- (a) The owner or operator shall list in the RMP environmental receptors within a circ's with its center at the print of the release and a ratios determined by the detailed to the endpoint defined in \$63.20(a) of this part
- (b) Note retries acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. John to identify environmental receptors.

### \$68.48

### \$68.36 Review and update.

(a) The number of operator shall review and update the offsile consequence analyses at least once every (tvelywars)

(h) If changes in processes, quantities stored or handfol, or any other aspects of the stationary conject resourced the stationary conject of the employed to increase or decrease the distance to the employer by a factor of two or more, the owner or operator shall oursplets a revised analysis within air months of the change and submit a revised risk management plan as provided in §68.190

### 16839 Documentation.

The owner or operator shall maintain the following records on the offsite consequence analyses:

(a) For worst case scenarios, a description of the vesset or pipeline and substance selected as worst case, assumptions and parameters coeff, and the rational for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the unities patch effect of the controls and mitigation, on the telescoparatity and rate.

the For alternative release somethes, a description of the scenarios identified assumptions and parameters need, and she rationale for the election of specific accorders; assumptions shall include use of any administrative controls and any mitigation that were assumed in limit the quantity shar could be missaed. Donumentation shall include the effect of the controls and rightfaction on the release quantity and last.

- (c) Decimentation of estimated quantity (c)rawed release table, and dimation of release
- (d) Muchosology used to determine distance to endpoints.
- (c) Data used to estimate population and onversamental receptors potentially affected.

### 568.42 Five-year acoldent history.

(a) The owner of operator shall include in the five-year suddent heating all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on

site, or known offsite despits, injuries, suscitations, sheltering in place, property damage, or unvironmental damage.

- (b) Data required. For each accidental release included, the owner or operator shall report the toilowing information.
- (1) Date time, and approximate duration of the release;
- (2) Chemicalist released:
- (2) Estimated quantity released in pounds and, for mixtures containing regulated toxic substances, percentage concentration by weight of the released regulated toxic substance in the liquid mixture.
- (4) Five or six-digit NATOS code that most closely corresponds to she process:
- (f) The type of release event and its source;
- (6) Weather conditions, if known;
- (7) On-site Impacts;
- (II) Known offsite impacts;
- (9) Initiating event and contributing factors of known.
- (16) Whether offsite responders were notified if known; and
- (II) Operational or process changes that resulted from anyestigation of the release and that have been made by the time this information is submitted in accordance with \$85.00.
- (c) Level of accoracy. Numerical eathmates may be provided to two significont digits.
- (5) FR 81719, Julie 20, 1399, as amended at 84 PB 974, Jan, 8, 1466, 89 FR 1,4401, Apr. 9, 2064)

### Subport C—Program 2 Prevention Program

 Schlieder at (46 0018), June 20, 1980, impless otherwise moted.

### \$68.48 Safety toformation.

- (a) The owner or observer shall compile and maintain the following opticate safety information related to the regulated nubstances, processes, and equipment:
- Material Safety Data Shoots that meet the requirements of 29 GPR 1918.1200(g);
- (2) Maximum Intended invertory of equipment in which the regulated submances are appeal or processed:

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- (3) Safe types and lower temperatures, pressures. Slows, and compositions;
  - (4) Equipment appoilinations; and
- (5) Codes and expedents used to design, build, and operate the process.
- (ii) The owner or operator shall ensure than the princes is designed in compliance with recognised and emerally accepted good engineering pracices. Compliance with Federal or state regulations than address industry-speuitic sees design or with industry-specitic cested codes and standards may be used to demanstrate compliance with this paragraph.
- (c) The amper or operator shall update the safety information if a major change occurs that makes the information indecentate.

Executive Data Note: At 03 FR 4897, Jan 12 3dd 48 was amended by revisiting on agreet (ant), cathedree Mar, 14, 2012, At 82 FR 8201, Jan, 38, 2013, this amendment was mill Mar 20, 2014, At 82 FR 1286, Mar, 15, 2017, Citie amendment was further Adayes intil Jone 15, 2017, At 82 FR 2738, June 15, 2017, this amendment was further delayed until Feb. 15, 2018 For the conventance of the user. the revised centre set forth as follows:

### 4 65 48 Safety information.

(4)

(i) Safety Park, Sheets (SES) that meet the regularization of 29 CFR (510.1300g);

### §88.50 Hazard review.

- (a) The owner or operator shall conduct a review of the hazards sessented with the regulated substances, process, and procedure. The review shall identify the following:
- (i) The hazards associated with the process and regulated substances;
- (3) Opportugities for equipment matfunctions or human eyrors that could cause an averdontal release;
- (3) The safeguards used or isself to control the hazards or prevent equipment melfunction or human error and
- (4) Any stage reed or needed to detect or monitor rejeases
- (b) The (wager or operator may use checkinsts developed by persons of ofganizations knowledgeable about the process and equipment as a guide to conducting the mylew. For processes dusigned to much industry standards on

Federal or state design rules, the hadard review shall, by inspecting all equipment, determine whether the process is designed, fabricated, and opcrated in accordance with the applicable standards or rules.

- (c) The owner or appraise shall decament the results of the review and ensure that problems 'dentified are resolved in a though manner.
- (d) The review shall be uplated at least ofte every five years. The owner or operator shall also conduct reviews whenever a region change in the process occurs, all issues the fitted in the review shall be resolved before startup of the changed process.

Personner Data Note: At 81 92 459, Jan 18, §68 50 the amended by towning paragraph (arg), effective Max. 14, 2011, at 82 FR 898, Jan 28, 2011, this amendment was until Max 35, 2011, this amendment was until Max 16, 2011, this amendment was barther delayed until Juno 19 2011. At 19 1010 1123, John 18, 2011, this amendment was further delayed until Feb. 19, 2013. For the convenience of the user, the revised Cax is set forth as follows:

### \$65.50 Blacked vortous

(2) \* \* \*

(2) Opportunities for equipment maintine (some in human errors that which makes an accidence i releves, including fundance from incident investigations;

### \$88.52 Operating procedures.

- (a) The owner or operator shall prepare written operating procedures that provide clear instructions or steps for sa(e)y conducting accivities associated with each corered process consistent with the safety information for that process. Operating procedures or instructions provided by confirment manufacturars or developed by porsons or organizations knowledgeable about the process and equipment may be used as hasis for a stationary source? Operating procedures
- (b) The procedures shall address the following
  - (1) Inelial startup:
  - (2) Norma') operations;
- (3) Temporary operations;
- Emergoney abushown and operations.
- (5) Normal shurdows;

568.56

- (6) Startup (cilewing a normal or emergency shutdown or a major change that requires a hazard review;
- (F) Consequences of deviations and steps required to correct or avoid deviactions; and
  - (3) Equipment Inspections.
- (c) The owner or operator shall ensure that the operating propedures are updated. If modesately, whollower a major change occurs and prior to startup of the changed process.

#### 568.54 Training.

- (a) The owner or operator shall ensure that each engitives presently operating a process, and each employee newly assigned to a devered process have been trained or tested competent in the operating procedures provided in \$85.32 that perials to their ductos. For those employees already operating a process on June 21, 1949, the owner of operator may ceruly in writing that the employee has the required Enowingly, skills and abilities to safely carry out the ductos and responsibilities as provided to the operating procedures.
- (h) Refresher training. Refresher training shall be provided at Yeas' every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheren to the employee understands and adheren to the employees. The owner or operating procedures of the process. The owner or operating the process, shall determine the appendiste frequency of refresher thaining.
- (c) The owner or operator may use training conducted under Federal or state regulations or under tradustry-specific standards or codes or training conducted by content percess applicance with this section to the extentions to bus training meets the requirements of little section.
- (4) The owner or operator shall ensure that operators are trained in any updated or new procedures prior to starrup of a process after a major change.

Gyggerium Dayre North At fiz FR 1897. Jan. 12. 508.54 West Amendall by recorder paragraphs (at., (b) and tid. and adding paragraph (a), effective Mar. 14, 2007. At 32 FR 3400. Jun. 28, MOT Fally Amendment was until Mar. 21,

SUC. At MY FM 1898. Men 15 POIR, this amountment was further delayed until Jame 19 SUR. At 82 PR 2088, Juste de 2015. This encodadeut was further delayed until Fig. 19 Mily For the convenience of the over, the arking and revised text seet forth as follows:

#### 16854 Training

- to.) The owner of operator shall ensure that each employer presently involved in operating a princest, and each employer newly averaged to a covered princes have been trained or tested competent in the operating procedures provided in §63.00 that perceive to these flowers For those simpleyees already operating a princes in June 21, 1984, the owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to takely parry out the duction of corporabilities as provided to the operating more because the procedures.
- The Hadranar fraining. Reflection straining shall be provided at least every three years, and must either if measurement, to each amplityee provided in operating a process to ensure shall the employee understands shall at least to the content operating procedures of the process. The owner or operation is non-suitable with the amployees operating the process, while determine the appropriate frequency of refresher walning.

(d) The owner or operator shall ensure that employees involved in operating a process are trained in any updated or new procedures, prior to etercisp of a process after a magnificance.

(a) For the purposes of the section, the term employee also includes supervisors to appropriate for directing propose operators.

### 468-58 Meintenance.

- (2) The owner or operator that? prepare and implement procedures to maintain the origing mechanical integrity of the process equipment. The owner or operator may use procedures or Sustancedous provided by covered process equipment versions or procedures in Federal or state regulations or industry codes as the basis for stationary source maintenance procecures.
- (b) The owner or operator shall train or mause to be trained each employee involved in maintaining the on-poles mechanical imaginary of the process. To ensure that the employee can perform the job tasks in a raise manner, each auch employee shall be trained in the hazards of she process in how to explid or opract unsafe conditions, and in the

### 85.86 9

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procedures applicable to the employor's lob tasks.

- (c) Any maintenance contractor shall ensure that each quatract maintenance employee is trained to perform the maintenance procedures developed upder paragraph (a) of this section.
- (d) The corner or operator shall perform an extract to be performed inspectations and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineers: practices. The frequency of inspections and tests of process equipment shall be consistent with applicable. Manufacturers: recognizations, understood exactlation or colds, good engineering practices, and prior operating expetition.

#### 488.58 Compliance surlits.

- (a) The owner of operator shall one tity that they have evaluated compilance with the provisions of this subpart at least overy three years to whify that the phondures and practices developed under the role are niequate and are being followed.
- (b) The compliance and r. shall be conducted by at least one person knowledgeable in the process.
- (c) The owner or operator shall devote a report of the audit findings.
- (d) The ewner or operator shall promptly determine and decomment an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected.
- rej The construct operator shall retain the two (2) most result compilance and through This requirement 600s art apply to any compilance and the port that is more than two years aid.

EFFECTIVE DATE NOTE At 32 FR 4395, Jan. 13, \$48.58 was antended by revising partyraph (a), and adding partyraph (f) through (b), effective Mar. 14, 2017, At 82 FR 9395, Jan. 26, 2017, this amendment was earth Mar. 21, 2017, At 82 FR 1930. Mar. 16, 2017, this amendment was further delayed until June 19, 2017, At 92 PK, 7000, June 16, 2017, this amendment was further delayed until June 19, 2017, At 92 PK, 7000, June 16, 2017, this amendment was better delayed until June 19, 2017, for the centrolies of the user the added and revised forth as follows:

### 663.68 Compliance wedits.

(a) The owner or operator shall certify that they have welloated completions with the promission of this appart for each coversiprocess at least every three years to verify that the priceoffice and practices developed under the rule are adequate and are being followed. Whet registre as set forth is paragraph (5) of this restles, the compliance audic shall be a third-party subtr

(D Phind-party spell) applicability. The next

- raphical compliance runit shall be a third party audit when due of the following conditions apply
- (1) An applicantal valence meeting the colterin in §59.42(a) from a covered process at a statement system bias descript; or
- (2) An implementing agency requires a third-party audit due to conditions at the stationary should that equid lead to an appleant, release of a remitated anisotrate, or whom a previous third party shalls falled to made the exemptional or undependence reserts of \$61,090)
- igh implementary agracy conflictation and appeals (1) If an implementary agreesy makes a preliminary determination that a third-party audit is necessary pursuant to pateriash (5(2) of this section, the implementing agreesy will provide mattern notice to the award or operator that describes the back for this determination.
- (S) Within 31 days of receipt of each written notice, the owner or operator may provide substantial and data to, and may consule with the implementing agency on the determination. Thereside, the implementing agency will recovide a final determination to the owner or agentate.
- (3) If the Book determination requires a third-party width, the owner or operator shall comply with the requirements of \$68.66, pursuant, to the admittable (n paragraph (n) of this section.
- (i) Appends. The owner of operator may appeal a final deterranted an made by at amplementing beganey officer paragraph 1932 of this contact within 30 days of recent of this contact, within 30 days of recent of this contact, within 30 days of recent of the made to the EPA Regional Administrator of for determinations about the administrator of director of such implementing agency. The appeal shall obstain a client and the case, and any research additional tobernation. In reviewing the appeal additional tobernation is reviewing the appeal, the implementing agency may request additional information in a review may request additional Secondation from the owner of operator. The implementing agency was provide a Wilself, final decision on the appeal to the aware or operator.
- (b) Sangately for arraducing a third-party sudir. The nodel and audity report shall be completed as follows, unless a different timeframe is specified by the emplementing agency.

5 6B.59

- (i) For there-party shallts requires primanul to paragraph (5.11) of this section, within 28 months of the release; of
- (2) For third-party subjets regalized purelant to paragraph (2)(2) of this souther, within 12 incentile of the date of the final determination pursuant to paragraph (g)(3) of this ention However, if the first determination is appealed pursuant to paragraph (g)(4) of this section. Within 12 innoths of the date of the than design on the appeal.

### \$68.49 Third-party audits.

- (a) Applicability. The owner or operator shall engage a third-party to account an audit that evaluates compliance with the provisions of this subject to accordance with the requirements of this section when either crisering of \$68.58.1) is mot.
- (b) PMod-party unditors and unaiting terms The owner or operator shall elther.
- (i) Pagage a third-party auditor meeting all of the competency and independence criteria in paragraph (c) of this section; or
- (2) Assemble an auditing team led by a hittel-party gofficer months all of the competency and independence criteria in paregraph (a) of this section. The team may include:
- (i) Other employees of the thirdparty andlice from meeting the independance criteria of paragraph (axi) of the section; and
- (ii) Other personnel not employed by the third-pagety qualitor form, including facility personnel.
- (c) Third-party auditor queltonations. The owner of operator shall determine and document that the Uninparty auditoris) meet the following competency and independence requirements:
- (1) Competency regainements. The third-purity auditor(s) shall be:
- Mnowledgeahin with the require ments of this part.
- (ii) Experienced with the stationary source type and processes being autited and applicable recognized and generally accepted and engineering practices, and
- (31) Trained analog cart'flet in proper and bing techniques.
- (2) /hilependence requirements. The third-party anditoris) shall:
- (i) Act imparts by when performing all activities onder this socious;

(it) Receive no financial benefit from the outcome of the audit, apper from payment for auditing services. Per purposes of this paragraph, retired employees who otherwise satisfy the third-party auditor independence or terla in this section may qualify as independent if their sole continuing from the description are singleyer-financed or managed retirement and/or identity plans:

Filed: 10/25/2017

- (ati) Not have conducted past deasarchi devolupinent, dezigu, constrantion services or consulting for the owner or operator withlig the task two years. For purposes of this paymerment, consolding does not include performing or participating in third-party audita persoant to \$60.58 or \$68.80. An audit firm with personnal who, before working for the auditor, conducted research, development, design, construc tion, or comenting services for the owner or aparatar within the last two vaare as an employee or contractor may mean the caputements of this subob lemmorish double girmicals lyd noidows not participate to the audit, or manageor advise the audit team concerning the sodit:
- (iv) Not provide other business or consulting gervices to the ewner or operator. Including advice or assistance to implement the limiting of procincepolations in an audit report, for a period of at basis two years following submission of the fluid sould report:
- (v) Unguest that all bhird-party personner involved in the stell tage and cate a conflict of interest statement, documenting that they meet the independence oriteria of this paragraph; and
- (a) Shaper that all third-party persuance involved in the audit do not accept father employment with the uniter to operator of the stationary source for a period of at least two years following submission of the final mater report. For purposes of this requirement, employment does not include parforming to participating in third-party audits pursuant to \$68.5% or \$68.60.
- (8) The auditor shall have written policies and procedures to ensure that

### 9 68.59

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- all personnel comply with the compstancy and independence doguse-ments of this section.
- (A) TIPI diparty auditor responsibilities. The owner or operator shall ensure shan the fill of-party auditor:
- (1) Menagea the audit and particlpases in audit initiation, design, hitplementation, and reporting:
- (2) Determines appropriate roles and responsibilities for the audit team membury based on the qualifications of ceçil tean; mainheti.
- (3) Prepares the andit report and where there is a team, documents the fall audio team's views in the final andit repart:
- (e) Certailes the final audit report and Its contents as meeting the requirements of this section; and
- (5) Provides a copy of the audih re-
- port to the owner of operator.
  (e) Aggir report. The audit report. shall:
- Identify all persons participating us the sudic team. Including pames,  $\alpha$ bles, employers and/or affiliations, and summaring of qualtifications. For thirdparty auditors, tookde information demonstrating that the compatency requirements in paragraph (c)(1) of this searton are meta
- (2) Describe or incorporate by refscence the policies and procedures reguired under paragraph (000) of this zection:
- (3) Decoment the auditor's evaluation, for mean advantal process, of the owner or operator's compliance with the provisions of this subpart to decor--para bits serufecong ent neithern saim tions developed by the owner or operagon under this mile are adequate and heing (ollowed,
- 14) Document the fluidligh of the audit, Including any identified Compliance or performance deficiencies:
- (6) Summariza any significant revi sings (if app) between draft and final Votators of the report; and
- -Richaeo gniwolloù edu ebudoni (6) cation, signed and dated by the thirdparty auditor or third-pasty addit team member leading the autilt:
- I certaily that this RMP compilance and t topost was propered under my direction or supervision in unconscious with a system designed to assure that qualified personne. properly gather and weareste the informa-

that area which the sulfit is based if further betrify that the addit was conflucted and this report was prepared parsonal to the requirements of ephysics G of All Child part 18 April 41. other applicable and: that, competency, finitependence, imparsingly, and conflict or menest elandards and protocule. Based on my personal knowledge and experience, and in gatry of personnel sovolved in the audit, she le formation submitted, hereix, is true, accurate, and cougaitte

- (f) Third-parts availt findings (1) Portfolige response regard. As scall as poser rethe each CG craft talk( on July eddis authing the final audit report, the awaer or aperator shall determine an арреориала имеропая то екий об Шю Hadrigs in the wolfs report, and devalog a findrage response report that iz cludes.
- (i) A copy of the final audit report;
- (ii) An appropriate response to water of the audit report Crolines.
- (III) A sebedule for promptly addressing deficionales, and
- (Iv) A certification, argued and dated by a sonior corporate officer, or an offidial in an equivalent pression, of the owner or operator of the stationary adured attachia
- I certify under populty of Jaw that I have engaged a third-party to perform or lead an audio team to conduct a third-party and it in accontants with the requirements of 40 CPR 08:33 and that the attached RMY energiazed audio report was received, saviewed, and sospeaden to under thy direction or duper-vaccin to munified personnel I forther excitty that appropriate responses to the findings have Leen identatied and deficiencies were currected, for any fermy corrected, consistingly with the requirements of subpart C of 40 CPR. units 68, as decraniented becale. Based on my points of personnel involve) in exelocting the report Andlegs and determining appropriate responses to the findings. the information eahmitted berein is true, pocurate, and coix. gleta. I am aware than thoto me signaficant proulties for moiting false material statemants, representations, or oscillustions inolading the cosmichly of Anex and Implining ment for knowing violations.
- Schedule implementation. cwher or operator shall implement the schodule to address deficiencies ideat:fied in the audit findings response psport in paragraph (f)(1)(iii) of this section and droument the action taken to address each deliciency, along with the date completed.

§ 649, <del>6</del>40

(3) Symmassion to Bound of Directors The award of aperator shall maintendiately provide a copy of each document Wagaired under paragraphs (201) and (3) of this section, when completed, by the Owner or operator's aidst committee of the Board of Directors, or other comparable committee or individual, if applicable

(g) Recording plant, The owner or operator shall retain at the stationary scorce, the two mass recent final third-party and to provide maken the approximation of actions taken to address deficiencies, and related records. This requirement does not apply to any document that is more than five years old.

Execution Date Royte At the Ph. 2887. Lan. 15, 19838 was added, effection Mar. 14, 2011. At 88 PH 5499, Jan. 26, 2017, this amendment, was cutof Mar. 21, 2011. At 82 PH 11958. Mat. 16, 2017, this amendment was further delayed until Jane 18, 2017, At 82 PH 21181. Jane 14, 2017, this amendment was further defayed upth Pah 19, 2019.

### \$68.60 Incident lovestigation.

- (a) The numer or operator shall invoctigate such includent which resulted in, or could reasonably have resulted in a catastropine release.
- (b) An incident investigation shall be unitated as permptly as possible, but not later than 48 hours inflowing the incident.
- (c) & summany slas] be propertd at the conclusion of the investigation which includes at a minimum;
  - Duto of (incline);
  - (2) Date investigation began;
  - (3) A description of the incident;
- (t) The factors that contributed to the incident; and.
- (5) Any recommendations resulting from the investigation.
- (d) The owner or operator shall promptly address and resolve the investigation findings and recommendations. Resolutions and corrective setting shall be dominanted.
- (c) The findings shall be reviewed with all afforded personnel whose job tasks are affected by the findings.
- (f) Investigation summaries shall be retained for five years.

BANKETTOWN SHAPE FROME, AL 22 FS. 4895. July 13, 1466-02 was amended redesignations surregistated for through (f) as 161 through (e) re-

vising paragraph (a) this now paragraphs (b) and (b) and adding a new paragraph (c), effective part (e), 2002, and FR 666, ign. 25, 2017, this amendment was until Mar. 31, 2017. At 82 FR 1968, May, 14, 2011, this amendment was notine delayed until June 19, 2017. At 82 FR 2188, June 14, 2017, this amendment was forther delayed until this amendment was forther delayed or (i) this amendment was forther delayed or (i) this amendment of the user, the unbled and revisor taxt is set forth as follows:

### \$48,69 (maident invisingation).

- paj The menor or operator shall investigate each toolders that:
- (i) Resulted to a catastrophic reteres (incould when the Affected process is decommissioned or destroyed solinemer, or as the Assolt of an incident); or
- (2) Could reasonably beve resultive to a perastrophic release the , was a pear miss.;

(c) An tucklant investigation team shall be assablished and consist of at least one between knowledgeable to the groupes thropped and called persons with appropriate knowledge and experience to theroughly nevertigate and shally a the includent.

(0) A report shall be prepared at the concluston of the investigation. The report shall be completed within 12 months of the Incidunt, unless the implementing agency approves in writing, an extension of time. The secont shall include:

- (1) Date, Sinv. and Ideation of Izenheir;
- (f) Dute inviotigation regen.
- (3) A description of the incident. In chromolograph order, goognizing all relevant focus;
- (4) The name and amount of the regulated substance in Physics on the Laisene (e.g., live, explosion, toxic gas tost of contribution) or near roles and the duration of the count;
- (5) The consequences, it was, of the incident moduling has not limited for imposes, distrible the imposes, distrible expendented, the months of people sholtered in place, and the impact on the environment;
- (6) Rimorgency response actions take...
- (5) The Indices that contaibuted to the incident archaling the Lattleting event, direct and indices contributes factors, and root causes shall be fictermined by conducting an oraclysis for orth medical using a reasymbol conducting an oraclysis for orth medical using a reasymbol medical, and
- (6) Any recommendations resulting from the seventigation and accomming for addressing them.

lg) isoxist. Investigation reports  $s \ge 11$  be retained for five years.

### \$65.68

### Subport D—Program 3 Prevention Program

Symmetry #1 PR 01722, Julia 26, 1996, Calessa otherwise acted.

### §68,86 Process aniety information.

- (a) In accordance with the actedule set forth b: \$66,67, the owner or openater shall complete a compilation of written process safety information befare conducting any process begand analysis required by the rule. The compilation of written process safety Informatiqui is so emable the dense or ninceator and too employees involved up aporating the process to identify and unnerscand the hawards posed by those proceessa involving engulated suustances. This process selfery information shall include information perteining to the hexanie of the regulated substances used or produced by the process, L. Joymanion partaining to the cochnology of the process, and information percaining to the equipment in the process.
- (b) Information pertaining to the as sacretating betwinger sits to abused the process This information shall consist of at least the following:
  - (I) Toxicity information,
  - (2) Permissible exposure familia;
  - (3) Physical data;
  - (4) Reactivity data:
  - (6) Correctifity data;
- (6) Thermal and observed stability da tat and
- (7) Hazardous effects of instructiont mixing of different materials 1787 could foresenably occur.

NOTE TO PAURSDAPH (b) Marantal darkly Data Phasts meeting the regalirements of W CPR (PIO 1900hr) may be used to comply with this requirement to the extert they contain law Information Toquirob by this subjects RTHÇŽ.

- (c) Information perintning to the technology of the process
- (i) infectiation concerning the technotagy of the process shall include as least the following
- bell lighted to marginth woll about A (1) process Flow Clayram.
- (ii) Process chemistry;
- (iji) Max;mmm intended invensory;

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- (iv) Safe oppor and lower limits (or such items as temperatures, pressures, flows or compositions; and,
- (v) An evaluation of the consequences of deviations.
- (2) Where the original sechulesi information no longer exists, such informaticul may be developed in conjuncfrom with the process hazard analysis. in sufficient detail to support the analys:8.
- (1)Information pertaining on the equipment in the process
- (i) Intermasion pertaining to the equipminno in the process shall include:
- (i) Materials of construction.
- (II) Phyling and instrument diagrams. (P&ID'9):
- (iii) Electrical classification:
- (19) Rollef system design and design
  - (v) Ventilation system design;
- (vi) Design, codes and attandants emphysical,
- (vII) Material and energy talances for processes built after June 21, 1999; and (vijii) Sąfety systems (a.e. interinoka
- detection un suppression áyatema). (2) The owner or operator shall aboument that equipment complies with recognized and generally accompany good.
- engineering praktlows (3) For existing equipment designed and constructed in accordance with codes, standards, or prectices that are na langer in general uso, the owner or cheracht shall determine and document. that the equipment is designed, matetarmed, inspected, tested, and operating in a side manner

REPROTUKE DAME NAME, AL 82 FR. 4890, Jan. 12, 463,65 one amonded by revising the first sa 9956 and amongon by 190912, 22 10 to sentence of paragraph (at und the note to paragraph (b). effective Mos. 14, 2017, at 63 PR 2499, Jan. 25, 2017, this amendances was until Mar. 21, 2017, at 32 PK 1306), Mar. 16, 2017, this emondment was further delayed until) June 15, 2017 At 88 PR 27138, June 14, 2017, this appendiment was forther delayed up.H2 Peb 18, 2019, Pos the convenience of the taux, the added text is not forth as fol-

### 188.65 Process safely information.

- (x) The ewner by aperator shall complete a compilation of written process safety informaxion before poorhicking way process linewed analysis required by the raid, and shall keep promise selety toformation op-to-date. \* \* - (b) \* \* \*

\$ 68.67

MOTE TO DERECTION (A) Safety facts Sheets (Stie) meeting the requirements of 25 GYR (901 1899g) may be used to comply with this requirement to the extent they combine the conformation required by paragraph (b) of the section

### 449.67 Process becard analysis.

(a) The owner or operator shall per-(original faltial process hazard unalysis Dissand evaluation) on processes dov-ored by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall. identify, evaluate, and control the hosazda involveč izi Ule processi The owner. or aperator shall determine and document the pylority rader for conducting process hasand analyses nosed on a ra-Modale which includes such consideractions as extent of the process baganes. number of potentially affected employ-cas, ago as the process, and operating history of the process. The process bezand analysis shall be conducted as eoutas possible, but not lathe thee June 21, 1989. Processe hawards similyson com-pleted to comply with 29 LPH 1910.118(e) are accoptable as initial process hazards analyses. These process hazard analyses shall be opdated and revalidates, based un their completion date.

- (b) The owner or speciator shall use one or more of the following methodolexies that are appropriate to determone and evaluate the harards of the process being auxiyaed.
  - (1) What-if;
  - (8) Checklisti
  - (3) What If Checklist;
- (4) Hasard and Operability Study (HAZÓP);
- (5) Fullare Mode and Effects Analysis (FMEA);
- (6) Fault Tren Analysia, or
- (ii) An appropriate equivalent methodology.
- (c) The process hazard analysis that! address
- (1) The hazards of the process.
- (a) The signification of any previous incident which had a likely putchtlal for catastrophic consequences.
- (3) Engineering and administrative concrots applicable to the hazards and their interrelationalities such as appropriate application of detection meth-

odologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and consint instrumentation with marms, and detection hardware such as bydrocarhon servors.);

- (4) Consequences of failure of engineering and administrative controls;
  - (5) Stationary source string;
  - (ii) Human factors; and
- (7) A qualitative evaluation of a range of the possible salety and health effects of failure of controls.
- (d) The process hazard analysis shall be performed by a team with expertise in originacting and process operations, and the team that? Include as least one employee who has experience and knowledge specific to the process being available. Also, one member of the team shust be knowledgesable in the specific process hazard analysis methodology being used.
- (a) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are issuited in a timely manner and that the resolution is documented, document what notions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, malifications and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.
- (f) At least every five (b) years after the completion of the initial process [azard analysis, the pencess bassisd mustysis shell be updated and greatheast by a team meeting the requirements in paragraph (d) of this section, to aroune that the process busined analysis is consistent with the engine process lipidated and revalidated process lipidated and revalidated process lipidated analysis completed to comply with 26 CPR 1910.119(e) are acceptable to meet the requirements of this paragraph.
- (g) The owner or operator shall retain process besends analyses and updates or retailed tons for each process overed by this section, as well as the documented seculation of recommendations described to paragraph (s) of this section for the iffe of the process.

### € 68.69

Byrecover Date Note: As 82 FR 4096, Can 13, §83.65 was amoning by reasoning beregious (1967), amonositing paragraph (1986) by removing the word "and.", amonosing paragraphing the word "and.", amonosing paragraphing (1979) by removing the pariod at the end of the paragraph and abbing " and" 12 fee pieces and by adding paragraph (1966), effective Mer. 14, 2011, Ab 93 YE 3489, Dan 28 2017, this amonomial was until Mar 53, 2011, At 82 FR 1986. Mar. 16, 2011, this amonomial was further Jelayaed until June 19, 2015, Az 82 FR 2013, June 11, 2017, this amondment was forther delayed until Feb. 28, 2019, Tim the convenience of the uter, the added text is second to the life of the state of the state.

### \$88.67 Process hazard analysis.

....

(2) The Engines from all resulent investigations required under \$56.01, as well as any other potantial failure scenarios;

(6) For proceeding to BATCS 201, 324, and 325 safer technology and alexantive risk recoequipment indepands applicable to elementating

or beligning main from proposed hexacils.

c) The owner or operator shall remained, an the following cude: of preference inherently safes technology or dealgr, passive coenantres, and propositival measures, and propositival measures, and propositival measures and be used to addison the desired risk reduction.

(ii) The comparer of operation state determine the product billow of the inherently safer tochardisples and designs considered.

### 468.89 Operating procedures.

- (a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for Safety conducting act vittes involved in each covered process Consistent with the process safety information and eligibalicates at least the following Sleinents
  - (I) Stops (or each operating phase:
  - (c) Initial stactup.
  - ((I) Normal operations.
  - (III) Temporary operations,
- (19) Entotyering sinutations, including the conditions under which emergency shuddown is required, and the assignment of abathorer responsibility to qualified operators to ensure that omergency shutdown is expected in a safe and timely manner.

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- (v) Emergency operations;
- (vi) Normal shubdown; and,
- (vf) Startup following a thingspound.
   or after an emergency shouldwar.
- (2) Operating Limits
- (i) Consequences of deviation; and
- (ii) Stops required to correct or avaid deviation.
- (3) Salety and health considerations. (1) Proposition of, and Lagaude presented by, the chemicals used in the
- process:

  (ii) Precautions necessary to prevent exposure, including empreening controls, administrative controls, and personal amponity equipment.
- (iii) Control measures to be taken if physical contact or addwire exposure origins.
- (iv) Quality control for raw materials wild control of hazardous chamical litvertory levels, and.
  - (v) Any special or dalque hazards.
- (4) Safety systems and that: (andturns.
- (b) Operating precedures shall be readily accessible to omployees who work in or maintain a process.
- (c) The operating procedures shall be reviewed as often as necessary to as some that they reflect convent operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The converge or operation shall certify animally that these operating procedures are current and about to.
- (d) The owner or eperator shall develop and implement sale work price these to provide for the control of hazards during operations such as borkgoot tagout, confined space offary; opening process equipment or plying; and control over entrance into a stationary source by maintenance, combractor, laboratory, or other amplies personnel. These sale work practices shall apply to employees and contractor employees.

### 168.71 Training-

ial Initiof training (I) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an according to the process and in the operating procedures as epoclified in \$68.68. The

5 68.73

training shall include emphasis on the spendic safety and health hearth, emergency operations including chirt down, and safe work practices applicable to the employee's job tasks.

ble to the employee's job taske.

(3: In her of initial training for those employees miready involved in operating a process on June 2: 1999 an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to enfertive out the duties and responsible to as appointed in the operating procedures.

(b) Reverter invising Universal instaning shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assert that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of coleast at testing.

(a) Fraining documentation. The owner or optimize shall exertisin that each employee involved in operating a process has received and understood the training required by this peragraph. The owner or operator shall jumpare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

Epreciate Date Note At \$1.50 ass, Jac. 13.5(6.7) was intended by adding paragraph (i), effective Mar. 14, 2017. At 32 PR \$420, Jac. 36, 2017. this ameniment was until Mar. 21. 2017. At 32 PG 1956s. Mar. 16, 2017. this ameniment was further delayed until Janu 19, 2017. At 53 PH 37(3), June 14, 2017. this ameniment was further delayed until Pet 19, 2019. Per the reportalisms of the ease. The added text is see forth as follows:

### 948.7t Training.

tall Por the purposes of this section, the turn complayer also includes supervisors with process operational responsibilities.

### 588.79 Mechanical integrity.

- (a) Application. Paragraphs (b) tigrough (f) of this section apply to the following process equipment:
- (1) Pressure vesen's and storage tanks.

- (8) Piping systems (including piping companents such as valves);
- (3) Robot and yout systems and devices;
- (4) Emergency shutdown systems;
- (5) Controls (including monthining devices and sensors, alarms, and interlocks; and,
- (8) Pumps

(b) Wristen procedures. The owner or operator shall establish and implement written procedures to maintain the ongoing littingrity of process equipment.

(c) Training for process maintenance nomines. The owner or operator shall train such employee involved in maluta/ning the on-going integrity of process equipment in each overview of that process and its barards and in the procedures applicable to the employees job tasks to accure that the employee can perform the job tasks in a safe memory.

(d) /aspection and bisting. (1) Inspections and tests shall be performed on parents equipment.

(2) Inspection and feating propositions shall follow recognized and generally accepted good engineering practices.

(2) The frequency of inspections and tests of process equipment shall be ennsistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined at be decessary by prior operacing experience.

(4) The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the documentation shall identify the factor of the parent who performed the inspection or test, the serial contact or other identifier of the equipment on which the impaction or test was performed, a description of the inspection or lest performed, and the results of the inspection or test performed.

(e) Equipment solutionies. The owner or operator shall exceed deficiencies in equipment that are contains acceptable limits (deficed by the process safety information in 468-65; before further use or in a safe and thirdly manner when necessary means are taken to assure safe presention.

(f) Ocally assentage (f) In the construction of new plants and equipment, the owner or operator shall assure that

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#### 668.75

equipment as it is fabricated is sulfable, for the process application for which they will be used.

- (2) Appropriate checks and enspections shall be performed to assum that equipment is Installed properly soff consistent with design specifications and the manufacture's instructions.
- (3) The owner or operator shall assure that maintenance materials, spare parts and equipment are autishin for the process application for which they will be used.

## 568.75 Wanagement of change.

- (a) The numer or operator shall establish and implement written procedures to makage changes (accept for "replacements it kind"; to process changes, sechnology, equipment, and procedures; rand. changes to stationary sources that sifers a covered process.
- (b) The procedures shall assume that the following considerations are addressed prior to any change:
- The continued basis for the proposed change.
- (2) Impact of charge on safety and health.
- (8) Modifications to operating probadome.
- (4) Necessary same period for the change, and
- (5) Authorization requirements for the proposed absence.
- (a) simplayees involved in operating a process and maintenance and contract employees whose jub tasks will be at feeted by a change in the process shall be informed of, and trained in. Use change prior to start-up of the process or affectod part of the process.
- (d) If a change covered by this paragraph results in a Change in the process nates indicate matter than the process rates information required by \$60.65 of this park, such information shall be updated accordingly.
- (c) If a change obvered by this paragraph results in a change in the operating procedures or practices condited by \$40.89, such procedures or practices shall be updated accordingly.

#### 568.77 Pre-startup review.

(a) The owner or operator shall perform a presswamp natety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety in fermeation

- (b) The pre-startup safety review shall confirm that prior to the Intro-Guetton of regulated substances to a process.
- Censimpotion and equipment is in accordance with design specifications;
- (2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;
- (8) For new stationary sources, a process hazard analysis has been performed and recommendations have been received or implemented before station, and modified stationary sources meet the requirements contained in management of thange, §68.75.
- M: "Training of each employee involved in operating a process has been complesed."

#### 968.78 Compliance addite.

- is: The ewner or operator shall per CCy that they have evaluated compliance with the provisions of this subpart at least every three years to varily that procedures and practices developed under this subpart are adequate and are being followed.
- (b) The compliance audit shall be conducted by at least one person knowledgeside in the process.
- (c) A report of the findings of the audit shall be developed.
- (d) The owner or operator sixiliprompoly determine and document on appropriate response to each of the findings of the compllance and to and document that defictencies have been corrected.
- (e) The owner or operator shall retain the two (2) moss recent compliance sould reports

(5) FR 01721, June 20, 1996, as amended at 64 DR 579, June 6, 1995)

Byrsonius Dwis Notes At #8 PR 488, Jan 13, 568.15 was amonded by revising patograph (a), and adding beinggraphs (if Shringh Oh), offschole Mar. 14, 2017 At (b) FR 4480, Jan 28, 2017, this amendment was table blor. 21, 2017 At 82 FR 1368. Mar. 16, 2011 has an onlinear twos facther delayed until June 19, 2017 At 82 FR 2788, June 18, 2017, this amendment was facther delayed until Fish 19, 2019. For the convenience of the weer, the added text resulter the fallows.

\$69.80

#### 368.79 Compliance and to

Mone apply

to! The owner or operator shall persity that they have evaluated compliants with the provisions of this subgest for each covered groceas, at least every three years to verify that he providence and practices developed united the role was adequate and are heavy followed. When required as set forth is, paragraph (f) no this section, the compliance applic shall be a Laind-party sodio.

(5) Third party and it applicability. The most supplied compliance saddt shall be a chirdparty under when can of the following condi-

(I) An applicantal release meating the deltable in §55-92(a) from a covered process at a stationary source has occurred, or

(2) An implementing ogency requires a third-party condit due to conditions at the stationary genome that equal heat in an ancidental release of a regulated substance, or when a previous third-party modit instead to most the competency or antisperulation delterns of 468.80cc.

tions of §68.60c).

(ii) implementing agency withfaction tout upperlie it! If an emplementing agency makes a preliminary distinction, that is that parely with its necessary parellal to pare graph (SCP) of this sense, the configuration of the parely will provide solution native to the govern or operator that describes the basis for this determination.

(3) Within to days at receipt of each wettten notate. The owner or operator may prosult information and data to, and may consult with the implementing opensy on the determination. Thereafter, the implementing against will provide a fixed dater principle to the owner or operator.

(3) It (the final determination requires a stated party audit, the conger or operator shall comply with the requirements of \$100.00 parameter to the schedule in paragraph (%) of this section.

(4) Appeals The owner or operation only appeal a faint it temporation made by an implementing operating appeal affect of the institution within a days of locality of the final decommentum. The appeal shall be made to the KA Regional administrator, or for determinations, made by other implementing egencies, the administrator or director of such amplementing agency. The appeal shall combine a clear and course state ment of the higgs of the first and course state ment of the higgs. Early to the miss, and any relayance additional information in research the appeal, the implementing agency will provide a withten, that decision on the appeal to the eworr or operation or the appeal to the eworr or operator.

(h) Sheetels for tordisciple a mon-purity code. The suddt and sodis report shall be completed as follows, unless a different timeframe is anscelled by the implementing agened

(i) Fin third-party addits regained passiant to paragraph (197) of this section, within 18 months of the release; or

(2) For third-party and its regulard phromant to paragraph (J(3) of this soction, within 12 months of the date of the final determination paragraph (J(3)) of the action. However, if the final determination is appealed parameter paragraph (J(4)) of this action, within 13 months of the date of the final decision, within 13 months of the date of the final decision of the tipeal.

#### 668.80 Third-party audits.

- (a) Applicability. The owner or specsion shall engage a chird-party to conduct an apolit shat evaluates compliance with the provisions of this subpart in accordance with the requirements of this section when either ortterion of §68.79(1) is met.
- (b) Third-party deditors and auditing mass. The number or operator shall et ther:
- (1) Engage a third-party addition meeting all of the competency and independence criteria in paragraph (c) of this section; or
- (2) Assemble an auditing team, led by a third party auditor meeting all of the compensors and independence criteria in paragraph (c) of this section. The team may had also
- (i) Other supleyees of the Uniciparty auditor firm meeting the independence criteria of paragraph (c)(2) of this section; and
- (ii) Other personnel not employed by the third-party architor (i.m., including facility personnel.
- (c) Third-party auditor qualifications. The owner or operator shall determine and document that the chird-party auditoris; meet the following competency and independence "accinements:
- (1) Competency requirements. The third-party auditor(s) shall be:
- (i) Knowledgesble with the requirements of this part.
- (ii) Experienced wish the stationary sonce type and recogness being and dited and applicable recognized and generally accepted good engineering practices, and
- (mi) Trained or certifica in proper en diffing beginniques.
- (3) Independence requirements. The shirt-party auditor(s) shall:

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 Ast impartially when performing attachingles under this section;

(II) Receive no Ananolal benefit from the outcome of the sudit, sport from payment for auditing services. For purposes of this paragraph, rathrod cosposes who otherwise estisty the third-party suditor independence oriteria in this section may qualify as independent if their sule continuing financial attachments to the owner or oputator are employer-flushess or managed rethrenset and/or health plans:

(115) Not have sandocted post reевятей, йемегоргасти, девіди, сольствоthen services, or consulting for the owner or operator within the last two years. For purposes of this regularment, consulting does not include per forming or participating in third-party andits parsagnt to \$68.59 or \$68.80. An audit tirm with personnel who, before working for the auditor, conducted research development, design, penstruction, or commutting services for the ewher or Operator Wishin the last two years as an employee or continctor may must the requirements of this sobscatton by ensuring such persunnel do ant participate in the audit, or manage or advise the audit team concerning ulia additi:

(12) Not provide other business or consulting services to the owner of dystator, and unding advice or assistance to implement the findings or recommendations in an audit proof, for a period of up least two years following submustan of the final social report:

(v) Ensure that all third-party perconnel involved in the nuclt input and date a conflict of interest statement documenting that they meet the independence contents of this paregraph; and

for: Engage that all third-party personnel involved in the sudi; do not accept inture employment with the owner or operator of the stationary source for a period of all least two years following submission of the final modit report. For purposes of this require metic, employment dose not include, performing or participating in thirdparty and the purposes of essential or fessent.

(6) The auditor shall have written policies and procedures to ensure that all poisonnol comply with the competency and independence requirements of this section.

- (ii) Third-party ordinor responsibilities. The Owner Of Operator shall ensure that the third-party auditor:
- Manages the sudtlemal participates in sudtl initiation, design, imple mentation, and reporting;
- (2) Determines appropriate rotas and responsibilities for the audic team members based on the qualifications of each team moreover:
- (8) Prepares the audit report and where there is a team, decompants the full suddit responsively where in the final audit report;
- (4) Gentities the final and thraport and its positions as mosting the requirements of this section; and
- (5) Provides a copy of the audit report to the owner or operator.
- i jai Amfil réport. The audit report shall:
- (1) Identify all persons participating on the audit team, including names, trtles, employers and/or affiliations, and summaries of qualifications. For thirdparty auditors, include information demonstrating that the competency requirements in paragraph (c)(1) of this section are incl;
- (3) Describe of Incorporate by yeserance the policies and procedures required model paragraph (0)(3) of this section;
- (3) Determent the solutor's evaluation, for each covered process, of the owner or operator's compliance with the provisions of this subject to determine whether the procedures and practices developed by the owner or operator under this rule are adequate and being fullowed;
- (d) Description the Cadings of the audit, including any identified compliance or performance deficiencies;
- (b) Simmwrize any algorithment reviarius (if any) between draft and final versions of the report; and
- its Include the following certification, signed and dated by the thirdparty auditor or third party auditteam member leading the sudit.

t pertury that this AME commission would report with presented under my direction or experision to accordance with a system designed to accord the qualified personnel.

5 68.81

property gasher and evolution the amount tion upon which the sufficient has self it further earlies that the sufficient and that has a large and a sufficient to the requirements of subject to of 40 CFR part 46 and all other egitleshie sufficient conflict of interest absulants and protects. Based on my personal knowledge and expensions and in my personal knowledge and expensions and in the audit the information authorities here is two, assulated and authorities and artists.

- (f) Third-party model Matthess-(1) Platfings response report As 6000 as possible, but no later than 91 days after receiving the final audit report. On owner or operator shall determine an appropriate response to each of the findings on the audit report, and develop a findings response report that maides.
  - (a) A copy of the final audit reports
- (ii) An appropriate response to each of the audit report fluitings;
- (133) A schedule for promptily addressing deficiencies, and
- Give A certification, signed and dated by a senter corporate officat, or all official in an equivalent position, of the owner or operator of the stationary shores against

I certify under poualty of law that I have kingaged a thurd-party to perform or Stad An ambit train to combot a third-party nidit in accordance with the regalitements of 40 GRR. 66.80 and that the attached RMP compliance addit report was received, verticized, and reappeaded to: confor any dispection or propervision to qualified personnel. I further persoly that appropriate responses to the findings have been admobilised and deficiencies were conrocted, or are being corrected, consistent with this regularization of subject D of 40 CFB. part 60, as dominented between Based on any porsonal knowledge and experience, or usquiry of personnel involved in evolutions she report findings and determining appropriate responses to the Cudings the informacion animatting happin in true, accurate, 21d CGEN plate. I am gwage that Hears are significant persisted for making take material statemental rigorosatatione, or conditionalisan, laabultur the possibility of times and imprison ment for knowing wick-libre

(2) Schedule Implementation. The awner or operator shall implement the schedule to address deficiencies identified in the audit fludines response report in paragraph (Oth)(II); of this section and document the action taken to actives each teticlency, along with the date completed.

- (3) Submission to Board of Directory The owner or operator shall immediately provide a vopy of each document required under paragraphs (3(1) and 2) of this section, when completed to the owner or operator's audit consistence of the Board of Directors, or other comparates accommissional or under vidual, if applicable.
- (A) Recorderang The owner or operator shall retain at the Stationary source the two much recent fine) third-party audit reports, related findings response reports, documentation of actions taken to address deficiencies, and related records

Bersonive Daris Moyer At AV 5W 6700, Jan 18, 58-80 was added, effective Mwn. 16, 2017 At W. PR. 6400, Jan 28, 2017, this alterydment wax uptal War. 21, 2017 At Ra PR 1896, Mar 16, 3017, this amendment was further delayed antil June 19, 2017, At 20 PR 27(18, June 16, 2017, Unit Amendment was further delayed antil Feb. 19, 3019.

# \$66.81 Incident investigation.

- (a) The owner or operator shall investigate each inclident which resulted in, or could resonably have resulted in a categories release of a regulated substance.
- (b) An incident bivestigation shall be initiated as promptly as possible, but not later them 48 bours following the includent
- (c) An Incidebt investigation team shall be established and consist of all feast one person knowledgeable in the process involved, including a contract employee if the mendent involved work of the contractor, and other persons with appropriate knowledge and experience to theroughly investigate and analyse the incident.
- (d) A report shall be prepared at the conclusion of the investigation which includes as a mintour.
  - (i) Duce of incident.
  - (2) Date investigacina began;
  - (3) A description of the upertent:
- (4) The factors that contributed to the incident, and,
- (5) Any recommendations resouring from the investigation.
- (e) The owner or operator shall establish a system to promptly satisfies and resolve the mordent report fieldings and recommendations. Resolutions and corrective rections shall be documented.

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#### 568.63

- (f) The topopt shall be reviewed with all affected personnes whose job tasks are relevant to the incident findings inchiding contract employees where applicable.
- (g) Incident investigation (eports) chall be retained for five years.

Reventive Date Note: At 00 PB 4701, Dec 10, \$80.00 was estanded by research paragraphs (a), (b) Instituted by research paragraphs (a), (c) through (f), and addition paragraphs (d)(c) through (f), effective Mar. 14, 2017, At 26 PB 439, Jan. 26, 207, Inis attendment was until Mar. 51, 2017, At 36 PB 1090, Mar. 15, 2017, this emperioral was further delayed until Jose 19, 2015, At 32 PB 27128, June 11, 2017, this engendment was further delayed until Pet. 19, 2019, Print the convenience or the uner, the adders and events to get furth as follows:

#### †88.68 Torrident investigation.

- (a) The owner or operator shall invostigate gath incident that:
- 9: Resulted in a cabastrophic release (unringing when the affected problem is the commissioned or destroyed following as at the results of an incidents or
- :2: Could teasonably bove resulted in a cabapprophic release (i.e., was a near miss)
- (ii) A respect shall be presented at the conclusion of the investigation. The report shall be completed within 19 months of the incident, unless the betweencomy agency approves in writing, so extension of time. The report shall include:
- (1) (bute, time, and limited of inchant
- (5) A description of the invident, in chronological order, providing all relevant facts;
- (4) The name and amount of the regulated antetams forestors in the release (e.g., first, caphages, tonic gas loss of containment) or near missian the duration of the event.
- (5) The consequences of analytic fitte includes a society function, that not therefore impulses, faralities, the realities of people (whealast), the number of people itself-town in place, and the amount of the assistance).
- (6) Binungency response ansicza tr.kez.
- (4) The factors that constituted to the innideal including the initiating event, likest and malroyt contributing factors and rest cutses. Both courses shall be determined by conducting an analysis for each incideal mong a congruent mathematical.

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 W) And recommendations resulting from the investigation and a schedule for addresslng them.

# 8 69.83 Employee participation.

- (a) The owner or appraison shall develop a wintee plant of action regarding the implementation of the employee participation required by this section.
- (b) The owner or operator shall consult with employees and their representatives on the conduct and development of process breards analyses and on the development of the other elements of process safety management in this role.
- (c) The owner of operator shall provide to employees and their representatives across to process besard analyses and to all other information required to be developed under this rate.

# §65.86 Hot work permit.

- (a) The owner or operator shall issue a hot work premit for het work operations conflucted on or near a process process.
- (h) The pormic shall decement that the five prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall insticate the date(s) nuthinated for his work, and identify the objects on which hot work is to be performed. The permit shall be kept to file until completion of the hot work operations.

#### 808.87 Contractors.

- (a) Amplication This section applies to confidence performing maintenance or repuls, turnaround, major removation, or specialty work on or adjacent to a covered process. It does not apply to contractors providing their debtal services which do not influence process safety, such as janitumal work, food and druk services, learning delivery or other supply services.
- (b) Comer or operator responsibilities.
  (3) The owner or operator, when selecting a confractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

- (2) The owner or operator shall inform contract course in operator of the known potential fire, explosion, or train release hyzards related to the contractor's week and the process.
- (8) The owner or operator shall axiple to the context owner or operator the applicable pravisions of subpart & of this part.
- (4) The owner or operator shall detelop and implement case work practices consistent with §60.6%C. To control the entrance, presence, and exit of the centract owner or operator and contract employees in covered (mosasareas.
- (5) The unmer or operator shall periodically evaluate the performance of the contract owner or operator in tubfilling their obligations as specified in paragraph (c) of this section.
- (c) Contract currer or operator responsibilities, (i) The contract owner or operator shall assure that each contract employee is trained in the work practices necessary to sufely perform his har job.
- (2) Whe communic owner or operator shall assure that each contract employee is instructed in the known potential firs, explosion, or toxic release baseds to higher job and the process, and the applicable provisions of the openeous action plan
- (3) The contract owner or contact shall document that each contract employes has received and understand the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contact employee the date of training and the recars used to verify that the employee understood the training.
- (4) The contract owner or operator shall assure that each contract employee follows the safety roles of the stationary source including the sale work processes required by \$68.69(4).
- (9) The centract ewher or operator shall advise the owner or operator of any unique hasards presented by the centract owner or operator's work, or of any hasards found by the centract owner or operator's work.

# Subpart E-Emergency Response

Sookes: 6t PF, 91785, June 30, 1996, rableta. Californiae nated.

# 468.90 Applicability.

- (a: Except as provided in paragraph (b) of this section, the owner of operator of a sectionary source with Program 2 and Program 3 processes shall comply with the requirements of § \$2.95
- (3) The names or operator of stationary source whose employees will ant respond to socidable; releases of regulated substances need not comply with \$48.25 of this part provided that they meet the following:
- (1) For similarity source, with any regulated hosts substance held in a process above the threshold quantity, the statiously source is included in the community energy response plan developed under 48 U.S.C. 11883;
- (3) For stationary sources with only regulated flaminable substances held in a process above the threshold quantity, the owner or operator has proprietated response actions with the local fire department, and
- (3) Appropriate mechanisms are in place to notify configurately responders when there is a need for a response.

Eposchive Data Mote, At 82 PR 400, Jan. 35, 588 90 was revised, effective Mac. 14, 2017 At 82 PR 3698, Jan 36, 2017, this amendment was until Mar. 31, 2017, At 82 PR 19955, Mar. 16, 2017, this amendment was further delayed until Jose to 2017, At 82 PR 2013, June to 2017, this amendment was further delayed anxi. Pet. 18, 2018, Yor the convenience of the they the added trut is set forth an fallow

#### 168.94 Applicability.

- in) Messenghat statismary shared. Except as provided in paragraph (b) of this section, the owner or operator of a stationary source with Program 2 and Program I processes shall comply with the regularments of 66,938, 68,96, and 68,95.
- 15: Non respecting proteoming source. The owner on operator of a stationary source where amplianes will only respond to actidental retences of regulated substances need not comply with §88.85 of this part provided that.
- (2) For stationary sources with any regulated systematics held in a process above the shreshold quantity, this pratoporty source is included in the originality sourcessands segment segment to the community sources segment of the community sources of the community sources of the community sources of the community segments segments of the community segment

# \$68.93

(2) For electronary andress with only regulated floriment to entertain section in a process above the threshold growthay, the owner or operator has coordinated besponse nections with the local fire department;

(3) Appropriate mechanisms are in place to pointly emergency respondent when there is a need for a response.

non The owner or operative performs the ammont emergency response operanaments we tiveress regulared under §55.98, and

(5) The Owner or aperator performs the onmun) invalination exercises conjuined under \$63,96(a)

#### 468.98 Emergency response coordination activities.

The owner or operator of a stationary scorce shall econdicate response needs with local emergency planning and insponse organizations to dotornate here the stationary source is addressed in the community omergency response pich and to ensure that local response organizations are award of the regulated substances at the stationary source. Under quantities, the risks presented by covered processes, and the resource and cassabilities at the stationary source to respond to an accedental release of a regulated substance.

(a) Coordination shall occur at least annually, and more inequently if uscressary, to address changes: At the stationary source; in the stationary source's morganity response andor entitiency action plan, and/or in the community emergency response plan.

(a) Coordination shall include providing to the local emergency planning and response organizations: The staclonary source's emergency response plan if one exists emergency solder. plan: updated emergency consect unformation: and any plater information that local emergency planning and reapoliss organizations identify as retevant to local eminterior response planning. For responding stationary snorms, coordination shall also acclude consulting with local emergency response officials to tetablish approprints achedules and plans for held and tabletop exercises required under §68.95(b). The number of operator shall request an appartunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and Clacuss these macertals.

# 40 CFR Ch. I (7-1-17 Edition)

(c) The owner or operator shall decament contribution, with though Authorities, including: The names of individuals involved and their contact information (phone nighter, entitles), whire-s, and organizational affiliations) dates of coordination activities; and nature of coordination activities.

COMMOTIVE (LATE MOTE: AL UZ ME 9701, Jan. 18, 568 90 was indeed, affective Mar. 14, 2017, at 82 FR 5409, Jan. 98, 2017, the autoredment was antol Mar. 31, 2017, At 62 FR 18968. Mai. 16, 2017, this investment was for their delayed uptil Jone 14, 2017, At 63 PR 87133, June 14, 2017, this impostment was further delayed uptil Jone 19, 2017, the amostiscent was further delayed until 64th 19, 2019.

# \$68,95 Envergency response program.

- (a) The owner or operator shall develop and implement no emorgency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:
- (1) Alt emergency response plun, which shall be manufathed at the stationary source and contain at least the (o) (owing almherds;
- (\*) Procedures for informing the public and local emergency response agentics about accidences releases;
- (ii) Documentation of proper first attiand emergency profitsal transform necassary to treat accidental human exposares; and
- (III) Procedures and measures for emergency response after an accidental release of a regulated substance;
- (3) Procedures for the use of emergency response equipment and for its inspection, harting, and maintenance;
- (3) Training for all employees in colevant probables; and
- (4) Proceedings to receive and update, as appropriate, the emergency response plan to reflect changes at the stationary suggested on usual that employees are informed of changes.
- th) A written plan that complies with other Federal contingency plan requisitions of is consistent with the approach in the National Response Team's Integrated Contingency Plan Guinzance ("One Plan") and that, among other mateurs, includes the oloments provided in paragraph (a) of this section, shall satisfy the requirements of this section if the owner or operator

also complies with paragraph (c) of this section.

(c) The emercancy response plan developed mader purugraph (x)(1) of this section shall be coordinated with the enminity emergency response plan developed under 12 U.S.C. 11005. 17933 request of the joest emergency planming committee of ematgerby response afficials, the owner or operator shall printipf(v erovide to the local amergenny responsa officials information necessary for developing And Implomenting the community emergency reарстве ріал.

39 Surplus (large bloom at \$2 FR 4932 Jan. 11, 968.55 was amprobed by revising personal graphs (n)(1)(f) and (o), and adding a septence in the end of paragraph (204), otherwise Mar. 14, Supr. Ac as Pfc 6824, Jan. 26, 2011 this amondment was until Mar. 21, 2012 Ar 111 Pfc (1568, Mair. 18, 2017), titis amendment was für ther deligned until John 19, 2007, AC 62 PR 20188, June 14, 2007, this amondment was for-ther deligned antil Feb. 18, 2007, For the coneventages of the user, the soled test is set for this so follows:

# 68.85 Easergency response program-

- (4)\*\*\* (5)
- (i) Procedures for informing the public and the appropriate Pederal, atom, and 1909) emengency response agunciae about accidental colleges.

(4) \* \* \* The nwise of operator shall review and update the plan ex appropriate Seed Ou changes at the stationary walks or new th-Jaismaston abteined from constituation Activition amongency response executes, incident insecting times or other available informa-tion, and ensure that employees are informed of the changes.

ju) The emergency response plan developed under paragraph (a)(1) of this section shall be coordinated with the committee emorgeness response plan divoloped auder 42 D.S.C. 1930 Upon request of the LAPC or ensergency response officials, the twenty or oper-ator shall primantly provide to the local imaginary response officials information decessivity for developing will implementing are community emergency response plan

# 588.96 Еврепцевору гимраниям ежентімет.

(a) Notificación estables. At legar once. cach calendar year, this dwier or oper-

ator of a stationary econce with any Program 2 or Program 8 process shall conducts an exercise of the stationary source's not-regardy response modification (probaniens expand under \$68.90(x)(3) or \$68.95(x)(1), as appropriate. Owners or operators of responding stationary sources may perform the notification exercise as part of the cabletop and held exercises required in paragraph (b) of fitts section. The coneroperator shall manuain a written record of each mobilication exercise conducted over the last five years.

Filed: 10/25/2017

- (b) Emergancy response standed program. The owner or operator of a scaclonary source subject to she requirements of §68.95 shall develop and implement an exercise program for its emergency response program, including the plac required under \$60.95(a)(1). Exerclass shall involve (actiffy emergency response personnel and, as appropriate, emergency response contractors. When planning emergency response field and tabletop excreises, the owner or open ator Stall coordinate with local public ametyascy reaconse officials and invite them to purticipate in the exercise. The emergency response exercise program stall include:
- Выстренску тепровак Якій плетовую. The owner or operator shall conduct field exercises involving the simulated -due betafuger a lo esaster fetnebloca stance (ne., toxic substance release or rolouse of a regulated flammable substance involving a fire aution axploaton).
- (I) Programmy. As part of contilination with local emergency response officials required by §69.93, the owner or operasse shall consult with these officials to respektion an appropriate Stockeroy. for Deld exercises, but at a infolmant. shuti conduct a field exercise at least doce every fen years.
- (II) Scape. Field excresses shall include. Tests of procedures to natify this public and the appropriate Federal, state, and local emergency response agencies shout an accidental release, tosts of pyroadures and reseasures (or emergency response actions including evacuations and medical Greatments teste of communicacions systems, mohttisation of facility emergency cospansa paysonnel, including contractore as appropriate, coerdisation with

#### § **68.10**0

total emergency responders: emergency response equipment deployment, and any other action identified in the emergency response program, as appropriate.

(2) Indistry elections. The owner or operator shall conduct a tabletop evercise involving the simulated accidental release of a regulated submance.

(1) Frequency. As part of coordination with Ireal emergency response officials required by §68.35, the owner of operator stall consult with these officials to establish an appropriate frequency for tabletop exercises, but at a meninguent shall conduct a field exercise at least once every three years.

(ii) Stope. The exercise shall include discussions of Princederes to natily the public, and the appropriate Federal state, and local emergency response agreement procedures and measures for emergency response including evacuations and measures for emergency response including evacuations and measures and their esponse and/or contractors and their responsibilities. Coordination with local emergency response opapoment deployment; and any other action tientified in the emergency response pion identified in the emergency response pion, as appropriate.

(3) Uncamentation. The awnewoperator shall prepare an evaluation report within 96 days of each exercise. The report shall include A description of the exercise scenamo: names and organizations of each participant; an evaluation of the exercise results including lessons learned, recommendations for improvement or revisions to the emergency response exercise program and surelegacy response program, and a schedule to promptly satiress and resolve recommondations.

(c) Attendible theories of thereby exercise requirements. The award of operator may satisfy the requirement to conduct nothination, field author sabletop exercises through:

(E) Sixercroses conducted to meet other Krideral, state or found exercise regularnionits, provided the mercise meets the high-rements of paragraphs (a) analog (b) of this section, as appropriate.

(2) Response to an accidental release, provided the response the limbs the actions indicated in paragraphs (8) \$10000 (b) of this section, as appropriate. When used to meet field and/or tabletop exercise requirements, the lowest of operator thall prepare an after-action report comparable to the exercise evaluation report required in paragraph (bi(8) of this section within 90 days of the incident.

REFERENCE DATE NOTE At 82 FR 1502, Jan. 13, 983 66 was added, offerties Mar. 14, 2017. At 82 FR 1989 Jan. 25, 2011, this amendment was until Mar. 25, 2017. At 82 FR 19868, Mar. 14, 2017, this amendment was further delayed until Parce 19, 2011, At 12 5ft F1071, June 11, 2017. This amendment was further delayed until Feb 15, 2015.

# Subpart F—Regulated Substances for Accidental Release Prevention

Sounce: 50 FR. 1209, Jun. Mr. 1991, united otherwise poles: Names/groups 4 tt 81 (911)1117, June 50, 1896.

#### \$69,100 Primpose.

This subpart designates substances to be listed under section 112(r)(3), (4), and (5) of the Clean Air Act, as amended identifies their threshold quantities, and establishes the requirements for petitioning to mid or delete substances from the list.

# 988.116 Threshold determination.

- (a) A threshold quantity of a regulated subscance listed in \$68.130 is present at a stationary source of the total quantity of the regulated subscance contained in a process exceeds the threshold.
- (b) For the purposes of determining whisther more than a threshold quantary of a regulated substance is present as the stationary source, the following exemptions apply:
- (2) Connectionisms of a regulated form substance by a minimum If a regulated substance is present in a minimum the concentration of the substance is below one percent by weight of the mixture, the amount of the substance in the substance has be roughleted when determining whether note than a threshold quantity is present at the substance yourse. Except for clear, toluene 4,4 discoverate, toluene 2,6 discoverate, and toluene discoverate the connection of the regulated substance in the mixture is one percent or prestor by

weight, but the owner or operator can demonstrate that the partial presents of the regulated substance in the unixame (solution) under handling or storage conditions in any portion of the process is less than 15 millimeters of mercury Chin Hy). The arcs of the substance in the mixture in that portion of the process used not be considered when determining whether more than a threshold quantity is present at the stability source. The owner or operator shall document his partial present one measurement or extinate.

(2) Consentrations of a regulated flommable substance in a miznira. (s) Canaral processor II & regulared autobance is present in a mixibre and the comcontrution of the substance is below one percent by weight of the mixture, the mixture need not be considered when determining whether more than a threshold quantity of the regulated substance is present at the stationary source. Except as provided in paragraph (b:(2) (6) and (iii) of this section, if the concentration of the anticlanus is one percent or greater by weight of the mixture. then, for purposes of determining whether a threshold quantity is present at the stationary source, the of their continue of the attack aligh to treatel as tise regulated substance orlina the pamer or operator can dom. onstrate that the mixture swelf does not have a National Fire Protection Association flammability basard rating of 4. The demonstration shall be in accordance with the definition of Camiasplitty basard rating 4 in the NSPA 704, Standard System for the Identi-(leasion of the Hazards of Maserials for Emergency Response, National Fire Protection Association, Quincy, MA. 1995. Available from the National Pire Protection. Association. Rantorymarch Parit, Quincy, MA 02369-910). This incorporation by reference was approved by the Director of the Pederal Register in accordance wish & U.S.C. 552(a) and i CPR part 51. Cupies may be inspected at the Environmental Protection Agency Air Dacket (6)02), Atan: Docket No. A-96-13, Waterside Mail, 101 M. St. SW. Washington DC; or at the National Archives and Recards Administration (NARA), For information on the availability of this

material at NARA call 202-740-6030, cy

to: Arrando ar profesiona guer ledenut\_registers 1986\_65\_festerat\_regulations/ ibr Tocacions.html Beislang point and Sast point shall be defined and determitted in accordange with NFPA 30, Flammable and Controvible Edgards Code. National Pure Protection Association, Quincy, MA, 1996, Available from the National Pice Protection Asscolation, I Balterymerch Park, Quiney, MA 02001-910" This incorporation by reference was approved by the Director of the Pederal Register in ac-registres with a U.S.C 5522a and 1 CPR part 51. Copies may be inspected at the Soutrenmental Protection Agency Air Docket (6102), Alta Docket No. A-95-Ob. Waterelde Mall, 401 M. St. SW., Washington DC; or at the National Archivee and Records Administration (NARA). For information on the availabiilty of this material at NARA, cali 209-741-6010. or go ta: waswichelines.gow/federal\_register/ code\_cf\_(estimat\_migrations) thr\_timathing have The owner or oper-

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the Death of Top of the original of the fact of the following of the National Property of the Property of the fact of the fact

(ii) Gossiana. Regulated substances in gasoline, when in distribution or related storage for hee as first for internal combastion engines, need not be considered when desermining whether more than a threshold quantity is present at a stationary source.

IIII) Naturally accurring hyperconductions markers. Print to entry into a natural gas processing plant or a provision refining process unit, regulated substance in naturally occurring hydrocarbon mixtures need not be considered when determining whether more than a threshold quantity is present at a stationary source. Naturally concerning hydrocarbon mixtures include any combination of the following, condensate, chude oil, field gas, and produced water, each as defined in §65.9 of this pare.

(8) diffeles. Regulated substances contained in articles need not be sensitived when determining Whether need that a threshold quantity is present at the étationary source.

(4) Uses. Regulated substances, when in use for the following purposes, need not be included in determining whether

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mean than a threshold quantity is given at the sectionary source.

- (i) Use as a structural component of the stationary source;
- (ii) Use of products for routine jainltomal maintenance;
- thin Cas by employees of Gods, drags, cosnesies, ar atlier personal Items containing the regulated substance; and
- (b) Use of regulated substances present to process water or non-contact cooling water as drawn from the environment or municipal sources, or use (i) regulated substances present in air case entire selection.
- (3) Artesties in historicists. If a regulated substance is manufactured, processed or used in a laboratory at a stationary source mader the supervision of a technically qualified individual as deficied in § 20.3(ee) of this chapter. The qualified in the chapter is provided in determining whether a threshold quantity is proposed. This exemption does not apply to:
- (i) Specialty climmical production;
- (II) Manufacture, processing, or use of substances in page plant scale operations; and
- (EE) Activities conducted cutside the laboratory

[60 FTR 1108, Jnn. St. 1595 Rodesignated at 61 processing, June 20, 1996, as assembled at 63 FTR 645 Jan. 5, 2866; RM 176 26603, Apr. 9, 2004.

## §68.120 Petition process

- (a) Any person may petition the Adcrinistrator to modify by addition or deletion, the list of regulated substances identified in §63.930. Based on the Information presented by the petitioner, the Administrator may grant or deny a patition.
- (b) A substance may be added to the list if, b) the case of an accidental release, it is known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to hornes health or the environments
- (a) A substance may be deleted from the list if adequate data on the bealth and environmental effects of the substance are available to determine that the substance, in this case of an abordental release, is not known to cause and may not be reusonably anticipated to cause death, injury, or arrious ad-

verse effects to human health or the environment.

- (d) No substance for which a national primary ambient air quality stainlard has been established shall be added to the list. No substance regulated under totale VI of the Chain Air Act, as amond ed, shall be added to the Risa.
- (e) The turden of proof is on the petitioner to domonstrate that the orthoris for addition and deletter are met. A petition will be denied if this demanstration is not made.
- (f) The Admenistrator will not accept additional petitions on the same substance following publication of a final notice of the decision to grant or dany a petition, naises new data lecoines available that could algorithmatly affect the basis for the decision.
- (g) Peritions to modify the list of regulated ambatances must contain the following:
- (i) Name and address of the pattioner and a brief description of the organization(s) that the nationer represents if applicable.
- (2) Name, suffress, and telephone number of a consect person for the petition:
- (3) Common chemical Lanceley, common synchrynks!. Chemical Abstracts Service number, and chemical formula and structure;
- (4) Action requested (add or desete a successful).
- (5) Destionate supporting the potitioner's gesition: that is, how the sebstance mesos the criteria for addition and dolotion. A short summary or the rationate must be submitted along with a more detailed parrating, and
- (6) Supporting date: that is, the petition must include satisficent softermation to screentifically support the request to modify the list. Such unformation shall include:
- (i) A list of all support documents;
- (ii) Ducumentation of Internature searches conducted, the heling but not limited to identification of the datebase(s) searched, the search strategy, dates covered, and printed results;
- (bi) Effects data (animal, homan, and environmental feet data; Indicating the potential for death, anjury, or serious adverse homan and environmental impacts from scate exposure following an appedental release, printed copies of

\$ 68,130

the data sources, in English, should be provided; and

(iv) Expanse that or provious needdent history data, indicating the poregistal for sarrous advance burean health or environmental effects from an accidental release. These data may include, but are not immited to, physical and chemical properties of the nebstance, such as raper pressure, modeling results, including data and assumptions used and model documentation; and historical needed data, citing data sources.

(h) Within 18 months of receipt of a petition, the Administrator shall publish in the Front-Expansion a notice either denying the petition of granting the petition and proposing a fielding.

#### 469,125 Exempliance

Agricultural nutrients, Ammonia used as an agricultural nutrient, when held by jamnets, to examps from all provisions of this part.

#### §AR.126 Pectusion.

Flammable Ruberances Used as East on Neta for Bute as Fixed at Retail Familities. A flammable substance listed at Tubles 3 and 4 of §65.130 is nevertheless excluded from all provisions of this park when the substance is used as a fact or beid for sale as a fuel at a retail faction.

[68 FR 1832), Mar. 19, 2000]

#### 508.130 List of substances.

(a) Regulated toxic and flammable substances under section 112r) of the Clean AS: Act are the substances listed in Tables 1, 2, 3, and 4 Threshold quantities for listed toxic and flammable substances are specified in the rables

(b) The basis for placing toxic and flammable substances on the list of regulated substances are explained in the notes to the list.

Table 1 TO § 88, 139—LIST OF ABSOLATED TOXIC SUBSTANCES AND THESPHOLD CONSTITUTE FOR ACCIDENTAL RELEASE PROVINCIAL Manages Constituted for the Accidental Constitution of the Accidental Constitution of the Accidental Cons

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7AN 0.1 m §68,130—LIST OF FOGULATED TOXIC SUBSTRACES AND THRESHOLD QUANTITIES FOR ACCESSIVE HELENSE PREVEN TURN CONSTRUCT

[Alphahasical Codes—17 Supplement]

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# 40 CFR Ch. J (7-1-17 Edition)

TABLE 1 TO §68,100—LIEY OF RESULATED TOKIC SAMPLANCES AND THE MAD DISASTERS FOR ACCORDENTAL PELLASE PREVENTION—Considered

(appropriate Oxfor-17 Supplement)

TABLE 1 TO \$68 130—LIET OF PERGLATED TURC SUBSTITUTES AND THRESHIZE OUGANITIES FOR ACCIDENTAL RELEASE PREVENTION Constituted (Agrothe call Order—37 Sucranova)

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TABLE 1 TO § 66 130—LIST OF RESULATED TOXIC SUBSTITUTES AND THRESHOLD GUNN-TITUL TOXIC ACQUENTAL HELEASE PREVENtras—Coolinged

properties of Order-17 Substances)

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lektore (* 1944)		:	l	Trend to lithing a	75-77-4	10,060	ь
Talianes: neilbert 7A4- ans, seventro-)	509-14-5	: 10,00C	5	tions (Supre). chinesi tamby		",	-
lagrépiq ligan chlotte (file- o es culodos (1904) (1954)	7.253-45-0	2,523	<b>b</b>	Very accessed representatively to accessed the ref reserve	100-05-4	15,060	ь
Tollande (2,4- discolyanato (Dearline, 2,4-	204 64 9	10,002	3	* The motors are use executive	-	і Імьулі сас	100 ghbh.o
rice copan dú-1- metay-ji Totaena 2,6- Unocyahate jilleraana, 1,5- nacopanata A nacopanata A	y1-48 ?	111/3-29   !	,	o On Distrik : Turkiyah	leinig by Congre sper greateurd (d regist officials, ) slony of specials in ministrational	) mentig ovig provinski i i i rodfindo serin	unoco h <sub>e</sub> dm

TABLE 2 TO § 69 100-LIST OF REGULATED TOXIC SLESTANCES AND THRESHOLD QUANTITIES FOR **АССІЗЕКТА, ЭТОСАЗУ РПЕЧЕКТІКІМ** (CAS remine Cross 17 Subration)

CAS No	Enemodinate	Threaterd to John Ip (ba)	Cause for Sel- cety
Statist	Formstookydo (stanica)	15,200	- L
57-14-T	1. On white white the depose, it infine melt	15 000	h
67-34-4	Matel tycrapes [thdrawe, religit]	16,700	. Б
67 68 3	(Taylor and Mahana, Totalor-)	20 000	ь
74 47 3	Hallight strongly (Mapriliano, Million)	10 000	
74-30-0	The promotion and	2.5700	4.0
(1)-86-1	Hydrocyanic acat Market mescage in [Motorrethic]	10,000	ь
73 15 0	Cartan Seriase	20,000	Ü
79 21 6	Ellaturo (mid.: (Chierra)	10,000	
	Processes (Cartaine dyfeutic) .	son	a, t
73-65-6	Proprieta mes Dumbre Symphys I	10,200	'n
75-50-8	Proplem cace (Outrie metric)	10,600	b .
75-74 1	tory pour doog (Payment, territoring)	10 000	ь
75-77-4	Tritis Indulations and (SRAIN), (Physidelettral)	la,can	ь
N=78-5	Tritus in yeld Access early (SAS ver. CRA vol 44 64 Fg. )	5 400	. ь
79-79-b	Matteresh disease [Skare, netrationesty-]	5,000	ь
	Sentrally contribe (freeges and other Zesselfs A.)	20,700	. 0
	Persons, and Ethanagerosco and	10.000	Ď
79-22-1	Metal (Riprocance) Corbonochloridit and methylecer	5 000	h
9:-39-7	Tokisse 7 Gebactparala Marcara, " Schutzyanski Gireligi P	10,200	้ง
105-52-8	Secretarian y Kingara, to descripted I	SIT DOTO	h
007-12-6	Bookerstyder (Owders, to consider)   Acodes (O-Process)	5,300	. 0
107-11-P	Abbrevia: 12 Pursus Languel	10 000	h
107-19-0	Proposit o Propagatical	10.700	n
100 13 1	Algerman (2 Proposit Lynnine) . Propional to Propositatinia)	20,000	
		\$0,000	h
107-18-6	Efytereterent (12 Eller(d))/40  Worstohni (5-Proper-1-d)	16,200	
100.40.2	Cray or graph members as Delenson, commonwhater	5 000	
	Marie actuals movement. Assist and other if 163ml .	10,600	
109-23-0	appropri columicames (Certamacriantic and 1-metry stop entry		
.00-60	. Deputy of the second control of the second		_

# \$ 68,130

# 40 CFR Ch. I (7-1-17 Edition)

TABLE 2 TO \$58,130-HIST OF PRODUCTHIS TOWN SURSOUNCES AND PROFESHOLD GLANCITIES FOR ACCIDENTAL DELEASE PREVENTION-Communical (CAS Northe: Dept.—77 Substance),

GNB Y2	C1em ≃in <i>zre</i>	Throubaid quarith (tota)	8351 151 151 151
104-61-6	Epitical grante (Epitoria - prante)	15,000	t
u/9-41-5	: Postal chicrocomele iCartemedicoco: e.e., usa//6/8/1	15,200	
:10 92-9	Fign.	5.900	
110 59 4	Migration	15 000	
223-73-9		20,000	ь
1,26Q6T	Ne hacryloridda   2 Process (#14), 2 0 0 0 p 1	10,900	l b
191 <del>-55-</del> €	Rtwinneimine (Aprione)	ID/OCD	
302-61-7	Profession	Inach	
363-43-4	Boran officerate compound with mellint of the (* 1) [Steph, Debter distribution of the compound of the compoun	19000	
505 J)-6	' Capangon charide	10.000	
509 14 B	(objection principle (see a construction))	Inote	ļ.
	Chlaromathyl other (Velhane onytos), Nov	1.460	
236-64 D		20,000	
	Tribiens 2.4-dissignmale [Berzens, 7.4-descepansio   meRgi	10,000	_
<del>244-4</del> 2 3		IBJOED	ь
601-53-0	Merby economic (Merene, recognistic)	10,000	
8:4-55-6	August projekte (2-Property) chloride) Exormalcekyda (2-Dolama)	5000	
4:79-30-0	Discriminately dis (id-Bolanus)	20,560	ь
7448-09-5	Suits dio vide Control outs	5000	
7456-11-9	Su la rivocita	10,360	∎.h·
7770-45-0	Solian Houses   Manifest House State   Figure on Abstace   TiClick   TiClick     House Interprete   Names, 1864/01/2    Hydrochtene and Gene 17% or grantes	2 500	
7637-07-7	Notes tellerandy (Ragging, 1864) ()	5000	
75:77-64-0	Pycaochiere and (core 17% or gravier)	15/300	
7647 £1 0	hydrogramatora (pubp) voje, (Aplanchinia sort)	5,000	ı –
7964-39-3	Profession Report Arthography and Count APPL 14 (Count of Library Research ASS)	1360	3, 3
/ <del>98</del> 4-41.7	Ammorts rentgeticus:	10,000	
7664 41 T	Survey trace Pre or getter	20,000	M 3
7827-37-2	Prince and gare 50% or greatest	16,060	
7789-12-2	Prosprove concile (Prosphered eldfolds)	15,000	0
7725-96-6	Brown	Injaca	
(755-41 <b>-</b> 4	flyare	1,200	
7736-00-0	СНФ-нс	2 500	
7740-06-9	Program  Unitarie  Ligenogra, suitide  Ingenogra, suitide  Ingenogra, suitide  Suitur les adeuse (5 (5 (1 (1 4)))  Amortius institución (5 (1 4))	10,700	
27 <b>5</b> 3-07-5	Pygroppe spanise	500	
77.13-86-0	Substitutional() (Substitutionals (SP3) (* 4)-; American inchicage	2,500	
7/AB 34-1	Arvenius inchloses	15,500	
7784-46-1	Angre Programs (Bayn (Buring Sulino wid) (Adhak add, mbara with salar Introde))	1,300	
72077-51-2	Prospries	(,360 (300 U)	
81 m 85 (	Carbon learned and up was) (wayne resolutions was upon according	5 360	
40025-17-3	Prosphora uny York Prior (No. ) (No.	5 360	
*KACHAH	Charme depot price will cook [CD]	10.00	
40102 43 9	raic ouds (havings- quos (40))		
71254-34-5	Borse Saliferato (Romano Taufésia ( )	1,300	
	TEMPLE STORY A	2,500	
13483-4D B		2500	
±9287.—15—T	Youere measures (inspection some) (burnow, 1,3 discovered the life	7, 40	
294/11/2/6	indicis ustravials und traditional according ("Sensockment and) ("	10000	٠

<sup>&</sup>quot;The meters committee in §-8 (1993), and one apply to the experience.

TABLE 8 TO § 69,130-LIST OF RESULATED FLAMMASIE SUBSTANCES 1 AND PAPESIAGLA QUANTITIES FOR ARTIDEN(AL HELEASE PREVENDON

[Algorithman, Critis—III Substances]

Chemical many)	C#9 No	Threshold custody (In)	Boss for Makey
Augmentyle Adegyme [Ulgor] Dismarkussikylene [Elleme   Lumottikusto-]	का का उ क्स <b>66</b> -2 800 का द	10,030	Ĭ

<sup>\*\*</sup>This method out material is given a report of support and a support of the factor for Limiting at Manufact for Surgicity (Comprise).

2. On Cit is last vaccio product a "Committy or greater.

3. On Cit is a vaccio product a "Committy or greater.

4. Touchty be injuries an electric polarization in terms injurying classific, and reports in congress a terms of the purpose of the

5 6B. 130

TABLE 3 TO §69,190-UST OF RESULTED PLANMABLE SUBSTANCES! AND THRESHOLD QUANTITIES FOR AGGIGERTAL REJEASE PREVENTION—Continued

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Studens die 100 bereit 1 10F U:+2 ecition. 80 IBT-87-3 :Danc 100000 100000 580 14:1 463-55-1 Cartern mys filds (Cartern state suiteds (COS))

District manuscrip (Cartern cod)

Champagiane (Fragens Catern)

Findstrapspetrate (Fragens Form)

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2 x Ademos vaccount (Fragens E.S. o-mostage) 10,090 10000 | r 10000 | q 10000 | q 7751×21=1 527-40+2 560 21 d 460-19-5 -0.000 -0,001 75-19-4 40 DOG 4109 DH 7 2,000 15-07-4 (24-40-3 10,000 10,000 Zeromone (Immunication - 1979)
Zeromone (Immunication - 1979)
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Digitare (Immunication - 1979) 163-82-1 74-84-3 •euaa li 167-00-0 75-04-7 10,000 Displan no (Diraname)
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| Jarantiamena |
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<sup>1</sup>A femotype culculate attenuand as a finite held in sale as a fine at a relationship or material from all professors of the part (see § 55.126).

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# 568,130

# 40 CFR Ch. I (7-1-17 Edition)

TABLE 4 TO \$66 130-List of Pediulated Flankvalle Sunstanges 1 and Therribote Oliantings FOR ACCIDENTAL GBLEASE PREVENTION (CR4 Number Uniter 155 Buthtraness)

History at 2 CAS No. -CAS Ha Owners new 00-26-0 70-55-6 74-65-0 74-45-1 10.600 Mellings Chane Edgenes (Gherne) IU DÚU 10 000 Acuty eru (150-er) Metry terosa (Matsasarera) Pagora (1-Mayris) Pagora (1-Mayris) Epiya chiorida (Erisana, chicas) 70 80 Z 74-83-0 14-93-6 10.200 10,300 r4 94 \* .... 74-89-7 ....... na **vy**je / 25**–3**0–3 Control (China) (China 's 00 2 ...... 69 07 4 78-08-6 78-08-1 D 000 10:00 75 07 0 76-08-1 76-19-4 75-28-5 16-47-0 10 500 10 500 ne da 1 15-63-5 15-27-5 15-47-3 16-65-4 15-61-5 16-63-7 15-61-7 15-19 4 .. ...... 15-88-5 ...... 5-22-3 15-26-4 15-30-4 15-30-4 15-30-4 16-3 100,344 10,300 10,300 16-03-7 ..... 15-50-2 ...... 15-76-3 ...... 15-23-4 ..... 10,500 10,200 19-70-1 19-70-3 100-97-6 100-99-1 100-99-1 100-99-1 15.056 Tributochina typera prema, cristoria. 9 8,006 1-Bustwa 10G-97-3 10 000 106-97-3 106-93-3 105-93-3 107-44-9 107-37-3 10/300 10/300 1.1648SPM ..... I, Teuroscon

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Partone 10,300 10,300 105-00-6 105-0:-7 107-25-6 105-05-0 109-05-0 10,300 107 81-3 10**9-86-**3 109-67-1 100-60-2 Page 1998

1. Page 1998

Why a line when (Editoric advance)

Price 1999

Programs (Necessary and Artel arms)

Programs (1 Program)

Market allows (1 Program) 10,300 10,000 10)000 10)000 100-95-5 115-0r / .... Populary (1 Piopola)

Marty shor (Mattano, orpho)

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Propolara (Sharakarana)

Carton orphosa (Sharakarana)

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1-Decomposition (I Propers, "Afters)
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Especiate Data Note at 85 PR 470s, Jan. 13, §63, 30 was a mented in Table 1 under sacond column scatteled "CAS No.", comparing the monther "107-18-61" adding "107-18-6" in the piace; and by newtong Table 6, effective Mat. 14, 207. At 88 Pfc 1999, Jan. 36, 2017, Castemorbined was until Map 21, 7007, At 38 98, 18609. May 16, 2017, thus amonthed was further delayed matrix large 18, 2007, At 81 FR.

37133. June 24, 2017, thus antendment was forthat delayed until Pet. 19, 2019. For the ornyour error of this usual that maked and motion! text is set in this is Jolines.

\$ 68,130 Edet of substances.

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TABLE 4 15 § 68.130—LIST OF HEQULATED FLARWORDS SUBSTANCES <sup>1</sup> AND THRESHOLD QUARTITIES FOR ACCIDENTAL RELEASE PREVENTION

(CAS Number Closs—(c) (Greenwood)

	,		
GAS No.	Cherarost name	Threshold quantity (%)	Basis for Basing
50-89-7	E-frat etter (Etrister, 1,1'-captes/)	10,000	u
74-22-H	McChane		ŗ
74-24-6	Ethere	10,200	· i
74-75-	E JigNine (Ethere)	10,000	. i
74 -8G-2	Acelulene (E3 mH)	10,000	!!
/4-64-6	Mainyonine (derhanamine)	:0.000	iı
74-98-8	l Passana	10,000	11
74-9 <del>9-</del> 7	Properti-Footalel	:4,000	i i
75-00-2	Ethyl chloride (Ethyrie, chlorid) Y nyl chloride (Einene, chlorid)	.0000	
?5-oʻ-4	Yinyi chloride (Ernene, chloro)	.4000	9.1
75-70-6	Yaryi Nadride (Efferta, 1886)	. p.c00	
75-C4-7	Ethylenerie (Ethenamenc)		:
75-G7-n .	Apelaldeligite		2
75-G8-1	Ertryl mercapian [Finanethrol]	10 1005	,
<u>75–18–</u> 5 ···· ···· ···	Syeopropore	10,000	!
75-20-5	leaguiane (Propane, 2 molty)	10 600	'
76-29-6	Improvy artenda (Projens, Schloro) Isoprovy arten (P-Projenseme)	10 000 (UNID	. !!
75-21 0	I Soprocy arang permanentally	000.01	,ñ
75-05-4	Virgicana chor de (Bitone 1,1 cichore 1.1 Ditterontrata (Bitane, 1.1 ditesso)		۲
75 38 7	Voyaldore Lyonde (Elbene, 1,1-dillores)	CHMD.	1:
75-20-0	Trimetriskmina (Pohanamina, N. N.d.)	'0000C'	li .
/A-20-4	mothd-l	5,400	Ι'
75 70 0	Toggmethyseme (Stenn orkemethyk)	901890	9
7818-4	Bayerane jBatana, Zynethy:		'ä
78-79-5	Ignorana   1.3,-2utadema, 2-methyl-;	10,000	5
79-98 9	Ti?luciac lioroethylene Ethene.		Γ
	(#knishilkatuo+).		
106 97 8	Dunene	10,0845	!
106-98-9	1 Busche	19,000	!
11K-K-0	I I 2::50120 ANC	10,050	!
107-00-5	[ 'liplacytywe'   1-800/16	10 0:10	:!
107 01 7	Z-Binene Vicyl mothyl other (Efriere, mothors)	100000	.!
167-25-5	Vicys metrys after Ethere, methodor,	10,020	
787-81-8	knemy (semesa (Formiz ettá mathy, ástar)		
100 <b>56</b> 0 .	Permane	10.1632	
100-67-1	1 Pontane   1 Pontane	10,000	12
:09-40-2	Fiftyt name (hitems Auto, Affryt 1609)	10,300   10,900	7
115-07-1	B !! B!	LO BOD	li
:15-10-6	Property of Property Association (Property of Association (Property Opening Control of Association (Property Opening Co	10,000	li .
115-11-7	2-Metrygropens [1-Propens, 2-redigit]	10,000	li
116-14-6	Telralacmethilene (Ethere, letralación)	10,500	l i
124-4C-3	Dimary/amino (Methanymos, N mairy/)	10,000	l i
460-19-6	Dyunggen [Ethanggiréol/o]	16,000	l i
453-45-0	Proporter a [1,2-Propurational]	10,100:	l i
aŭŝ 56 1	Carbon conjectings (Carbon code sulhon)	10,000	1
	(205))		
463-82-1 .	i 2.2-Curnellhytgroppene (h'impene, 2,7-turethyt-∏	10,000	1

#### \$68,150

Table 4 to \$68 130—Lest un Broatanna Flavorage: Scestiver oil aux Thrieshullo Chandhés FOR ACCIDENTAL PELCASE PREVENTION: - Confining

<ul> <li>(CAS réprése Stour—63 Substant</li> </ul>	34.5

	(0-0-3-20-0-3-0-0-0-0-0-0-0-0-0-0-0-0-0-0		
EAS No.	Chomical name	Threshold quantity (los)	Basis for Saling
563-45 : 770-46 ? 570-46 ? 570-46 ? 570-46 : 590-71-8 590-71-2 624-64 6 667-20-0 640-04-0 620-67-4 1333-74-0 4102 96-0 7/41-21-1 7803-62-6	2-Methyl : - Lutené S-latigna-ce S-latigna-ce Chiorophylene (I - Propené, I - chipori Bromodilinolathysine Bromodilinolathysine S-latigna-mans (P-tipené, III) 2-Pomane, (Z) 2-Pomane, (Z) 2-Pomane, (F) Vinyl epetyfone (I - Sutama-ma) Hydrogén Cottomodigne (Salane, Actional Chiorine monaride (Chiorine avide) Silane Trichicololate (Salane, Inchino)		
50.0000-9 " " " "	Butene	10,000	L

I A flaurizable substance when used as a fivel or hold for sale as a fivel at a retail facility is excluded from all proveions of this part (see § 66 126).

Note: Basis for tieling:

\* Mandated for listing by Congress.

# Subport G-Risk Management Plan

200808: 01 FR 31730, June 30, 346, milites otherwise posted.

## 488.950 Submission.

- (a) The owner or operator shall submit a sangle RMP that includes the information required by 3568.156 through 68 185 (or all covered processes. The RMP shall be advantaged in the prethod and format to the central point apeclfled by RPA as of the date of submisвіол
- (h) 'The owner or operator shall submit the first HMP no later than the latest of the following dates.
- (U) Jima 21, 1299;
- (2) Three years after the date on witter, a regulated substance is first listed under §68.130; or
- (2) The date on which a regulated substance is first present above a Directold quantity in a process
- (c) The owner or operator of any stetionary source (or which an RMP was anumitted before Jone 21, 2004, al.a)) 16vise the RMP to highlide the informa-

tion regrigged by §68.180(0)(6) and (14) by June 21, 2004 in the manner specified by EPA prior to that date. Any such submuseon aliatt also include the informateon required by 468.1600b\*(20) rindi casing that the autimission is a correc-Non to tacture the information required by §68.180(b)(6) and (14) or an up-4-ce mieler §88 190).

- (ii) RMPs submitted under this section shall be updated and corrected in accordance with §§60.190 and 60.195.
- (e) Natwithstanding the provisions of 5568.155 to 86 198, the FOXP shall exeinde elassificó luformation. Subject to անութ հորջույց ոժ թեւկաներվուց գումողողվել է Information from puthe disclosurs, classified data or information excluded from the RMP may be made available in a classified acres to the RMP for toview by Foderal and state represents. tives who have received the approamate security dicarances.
- (f) Procedures for asserbing shat infolycemen schooleef in the RMP is shtitled to protection as confidentia) business Information are est forth in 99 68.351 and 68.152.
- (#1 FR 3) 126, June 20, 1696, as amounted at 64, FR. 875, Jan. 6, 1989, 69 FR. 18891, Apr. 9, 2004

<sup>·</sup>Натепаble µаз.

Volatile frammable found

#### \$66,150

# §68.151 Assertion of claims of confidential business information.

- (a) Except as provided in paragraph (b) of this section, so owner or operstor of a stationary extroe regative to report or otherwise provide information under this part make a claim of confidential business information for any such information that meets the criteria set forch to 40 CKR 2001.
- (b) Notwithstanding the provisions of 40 GFR part 2, an owner or operator of subject to bits part may not clayin as operidential hustness information the following information.
- Registration data required by \$68 160(b)(1) through (b)(6) and (b)(6) (b)(0) through (b)(13) and NAICS code and Program level of the process ses Sorth in \$68,190(b)(2);
- (3) Offsite conesquegres analysis dara required by 960.165(b) 90, (b)(9), (b)(10), (b)(11), and (b)(18).
- (8) Acoldent history data required by §68.168: .
- (4) Strevention program data required by §68.170(b), (4), (e)(1), (f) through (k);
- (b) Prevention program data required by \$68.13(b), (d), (e)(1), (f) through (p):
- (6) Emergency response program data required by §68.180.
- (c: Notwithstanding the procedurer specified in 40 GFR part 2, an aware no operator assaulting a claim of CEI with respect to information contained in the RMT, shall submit to RPA at the time it submits the RMT the following
- The information sitting confidential, provided in a format to be aparitied by EPA;
- (2) A sentinged (reducted) copy of the RMP, with the natation "CBi" substituted for the information claimed contidential, except that a generic category or class name shall be substituted for any (Repulsal name of identity claimed confidential, and
- (3) The decoment or dominents substantiarity each claim of confidential business information, as described in (6) by.

164 YEARTS, Jun. 6, 1998)

#### 668.132 Substantiating claims of confidential business information.

 (a) An owner or operator distribute that information is confidential business. Information must substantiate

- that chalm by providing documentation that demonstrates that the ejstimmeets the substantive criteria satiforth in 60 DMR 2.801.
- (b) Information that is submitted as part of the substantiation may be eisiened confidential by marking it as confidential business intermation. Information and may be disclosed without notice to the submitted is information that is submitted as part of the substantiation is claimed confidential, the owner or operator must provide a substantiation or discretized version of the substantiation as claimed confidential.
- (c) The owner, operator, or sander official with management responsibility of the stationary source shall sign a certification that the aignor has parsonarly examined the information submitted and that based on inquiry of the persons who compiled the information, the information is true, accurate, and complete, and that those portions of the substantiation claimed as confidential business information would, if the closed, pagest these sources or other confidential business information.

[81 77: 985, Jan. 6 1990]

# 968.135 Executive summary.

The owner or operator shall provide in the RMP on executive sommary that includes a brief description of the following elements

- (a) The accidental release prevention and emergency response policies at the stationary source;
- (b) The stationary source and regulated substances handles,
- (c) The general application release prevention program and chemical-specific prevention steps:
- id: The five-year socident history;
- (a) The emergency гозробии program: and
- (f) Planned changes to improve safety.
- (6) FR 01106, June 20, 1996, as amended at 59 FR (1981, Apr. 3, 2004)

# \$68.160 Registration.

(a) The Swier or operator shall complete a single registration form and in clude to in the RMP. This form shall cover all regulated substances handled to covered processes.

#### \$68,165

#### 49 CFR Ch. I (7-1-17 Edition)

- (b) The registration shall include the following data:
- Stationary apurce name, attest sity, country, state, up code, latitude and longitude, method for obsaining latitude and longitude, and description of location that latitude and longitude represent;
- (2) The stationary source Hub and Bradetreet number.
- (3) Name and Dun and Bradstreck number of the corporate parent company;
- (4) The manie, telephone number, and mailling address of the owner or operator.
- (5) The name and title of the person or (osition with overall responsibility (or TMP elements and implementation, and (optional) the e-mail address for that person of position.
- (6) The right, title, talaphone number, 21-hour telephone number, 21-hour telephone number, and, as of lune 21, 2004. The e-mail address (if an e-mail address exists) of the enturgency contact.
- (i) For each covered process, the mane and CAS nonther of each constructed substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two algolificant digits, the five- or six-tiget NAICS code that most closely corresponds to the process, and the Program level of the process;
- (8) The scattonary source EPA identifier:
- 19: The number of full-time employom at the stationary source;
- (10) Whether the stationary source is subject to 20 OPR 1910.119:
- (11) Whether the stationary source is subject to 40 OFR part 355;
- (12) If the stationary source has a CAA Title V operating permit, the permit number, and
- (13) The date of the last safety inspection of the stationary source by a Pederal, state, or local government agency and the identity of the inspecting antity.
- (14) As of June 21, 20(4, the mans, the marking address, and the telephons number of the contractor who prepared the RMP (If any),
- (15) Source or Parent Cumpany E. Mail Address (Options1);

- (16) Source Homepage address (Optional)
- (17) Phone number at the source for public inquiries (Optional);
- (18) Local Emergency Planning Committee (Hiphional);
- (19) CSHA Voluntary Protection Program status (Optional);
   (20) As of June 21, 2004, the type of
- (20) As of June 21, 2004, the type of and reason for any changes being made to a proviously submitted RMP; the types of obenges to RMP are out egonised as follows:
- (i) Updates and re-submissions required under §68.199(b);
- (ii) Corrections under \$48 (85 or for purposes of correcting minor cherical errors, updating administrative information, providing missing data elements or reflecting families overeight and which do not require an update and re-administrative aspecified in §68.190(0);
- (313) De-registrations required under §68 190(c), and
- (iv) Wishdrawals of an RMP for any facility that was erroneously considered subject to this part St.
- [6] FR \$17% June 70, 1966, an ameridad at 64 FR 980, Jan. 5, 1995; 59 FR 18831, Apr. 9, 2004.

Epperatus Date Note: At 40 FR 400, San. D. 564 189 was amended by adding parametric (572) and (22), affective Mar. 14, 5015. At 87 FR 400, Jan. 38 500, this amendment was ontil Star 81, 2017 At 88 FG (366, Mar. 16, 507, this amendment was further delayed until June 18, 307, At 88 FR 27128, June 14, 207, the amendment was further delayed until 905, 16, 2012. For the convenience of the user, the added text is set forth as follows.

# 488.180 Registration.

. . . . . .

(6) 4 4 4

(3)) Method of communitation and location of the potitionation that charactal based information is excitable to the public, purential \$50 \$00(c); and

(22) Whithier a public meeting the best following an RMF reportable accident, pursuant to \$88.200(a).

# \$49,166 Offsite consequence analysis.

- ia! The awar or specator shall subsul to the RMP information.
- One worst-tinse release scenario for each Program 1 process; and

- (2) Pur Program 8 and 3 presentes. one worst-ease release sentanta to represent all regulated round substances beid above the threshold quantity and one worst-case release econocio fo represent 2:1 regulated flammnable substances bold above the threshold quanthry. If additional worse-case scenures for toxics or flammatics are required by \$60.25(e)(8xlin). Geolowicer or opennotisamiouri sanas eta atambe liuornositon on the additional scenario(s). The owner or operator of Program 2 and 3 processes shall also submit information on one alternative release scenario for rant segulatan Loxic substance belik always the threshold quantity and one eltemative release scenario to rep resent all regulated flammable autstances held above the threshold gitantitty.
- (b) Whe owner or operator shall submit the (ol)owing data:
- Ctemical name.
- (2) Prycentage weight of the chemical. in a liquid mixture (taxios caly):
  - (3) Physical state (toxics only)
- (9) Husta of results (give model haine if need);
- (5) Scenario (emplosion, Hrc. voxto gas. release, or liquid apth and evapomateron %
  - (6) Quantity released in goodle. (7) Release rate: (8) Release duration:
- (8) Wibil speed and atmospheric erability class (forms only).
- (16) Topography (toxics only).
- (11) Distance to endpoint.
- (12) Public and environmental recept ones within the distance:
- (13) Passive multipation considered; and
- (14) Active mittgation considered (41termutive releases unity o
- [6] PK 23725, Japon 25, 2886, we arrended at 64, 978-986, Jan. B. 1999;

#### \$68.168 Pive-year accident history.

The owner or operator shall a binit in the HMP the information provided in §68.42; h: no each accident covered by § liB.12(a).

# \$68.170 Prevention programProgram

(a) For each Program 2 process, the owner or operator shall gravide in Sile RMP the information indicated to parngraphs (b) through (k) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicare to which processes the bilisemstion uppites.

- (b) The five or sax-digit NARCS code that most closely corresponds to the arocess
- (c) The name(s) at the chamical(s) covered.
- (d) The date of the most recent review or revision of the safety information and a list of Pederal or state regulations or followry-specific design codes and standards used to demonativate compliances with the safety information requirement.
- (e) The date of completion of the most recent bazard review or update.
- (I) The expected date of completion of any changes resulting from the hasard restew.
  - (2) Major hazards :úentafied;
  - Process controls in ose.
  - (4) M.tigatita systems in use;
- (5) Monitoring and detection systems: in mae, and
- (6) Changes since the last becard re-
- of) The date of the most recent review or revision of operating procedures.
- (g) The date of the most recent review or revision of training programs.
- (1) The type of training providedсваямност обявичност ріня от тіне јою, on the Job; and
- (2) The type of competency testing e sed.
- (b) The date of the minst recent review or reviewed of maintenance blockdures and the date of the most recent equipment inspection or test and the equipment hapeoted or tested.
- (I) The flare of the most recent compliance audic and the expected fixth of completion of any observe resulting from the compliance audit.
- ()) The date of the incer recent incident investigation and the expected date of contribition of any charges resatting from the investigation
- (k) The date of the most recent change that triggered a review or revision of safety information, the basked

#### 54B.175

review, operating or maintenance procedures, or training.

[61 77 3172), June & 1926, as expensive at 56. PR 250 Jan. 6, 1999)

Bryggeriva Dark Nove At \$2 yis 403, like 13, §88.20 was amoded by tayloing path-graphs (1) and (1), affective Mar. 14, 2017. At \$17.348, Jan. 96, 2017, this amoniment was mutal Mar. 21 2017 At \$18.104 19900, Mar. 16, 2017 Cals anceidenedt was further delayed until June 18, 2017. At \$1 FR 27105, Jone 18, 2017 Cals anceidenedt was further delayed until June 19, 2019. For the occavationed of the user, the subset last is set justle as follows.

#### 263.170 Prevention program regram 2.

(a) The date of the most recent compliance sodil, the expected date of completion of any changes resultant from the compliance makin and identify whether the most recent compliance sudil, was a third-party appliations to \$10.51 and \$0.59.

(j) The completion date of the most recent appliant moralingation and the expected date of completion of any changes resulting from the investigation.

# 388.175 Prevention program/Program.

(a) Pur each Program 3 process, the owner or operator shall provide the Information indicated in paragraphs (b) through (p) of this saction. If the same entermation applies to more than the covered process, the owner or operator may provide the information only those, but shall indicate to which processes the information applies.

(b) The five- or exadegit NAIOS code that most clanely corresponds to the process

(c) The name of the substance;s) covered.

(d) The date on which the ealety intermation was fast reviewed or revised, (a) The date of completion of the

most recent PHA or update and the technique mad

(1) The expected date of completion of any changes resulting from the FILA.

(2) Major hazzads jéspülfjed;

(3) Process controls in ase,

(4) Milligación systems in pee,

 (b) Monitoring and detection systems to use; and

# 40 CFR Ch. I (7-1-17 Edition)

(6) Changes sinon the last PHA.

(f) The date of the most recent review or revision of operating procedures.

ig: The date of the most recent review or sevience of reduing programs,

(i) The type of training provided classroom, classroom plus on the job, on the job, and

12: The type of competency testing used.

(h) The disk of the most recent raview or revision of maintenance progdures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(f) The date of the most recent change that therefored management of change procedures and the date of the most recent review or revision of management of change procedures.

(c) The date of the most recent pen-

starting neview

(b) The date of the most resert ourpitance and t and the expected date of completion of any changes resulting from the committance and to:

(1) The Cate of the most meent incidest investigation and the expected date of completion of any changes resulting from the investigation;

(in) The date of the most recent review or revision of employee participation plans.

in: "The date of the most recent review or revision of hos work permit procedures."

 (a) The date of the most recent review or revision of contractor safety procedures; and

(g) The data of the most recent evaluation of contraduct safety perform-

[GL FR 31786, June 20, 1996, as emended at 64 FR 989 Jan. 6 1990]

Expective Data Rota, At 82 FR 4794, Jan 13, §88,119 was anneaded by levicing paragraphs (a) introductors that, (b), (d), (6), (d), and (d) and adding paragraph (e) with effective blan, 14, 2017, At 82 FR 5489, Jan, 20, 2017, this moondment was analysisar, 21, 5021, At 82 FR 17683, Mar. (6), 2017, this amondment was further delayed until June 19, 2017, At 9; FR 3133, June 34, 3007, this amondment was further Jelayed until June 19, 2017, At 9; FR 3133, June 34, 3007, this amondment was further Jelayed until Fan, 16, 2019, For the conception of the over, the added and ravised text is set forth as follows:

#### 168-174 Provention programs Program J.

. . . . .

6 68. F8D

- (a) The most (seems process bazard scalyour (PMLA) on PMLA update and revaluation information parameter of SIGPT including
- (1) The date of completion of the most rement PHA or applica and the technique used.
- 45: Meditoring and detection systems in WMD:
- 46) Changes approxime and PHA, and
- (7) Intervally safer technology or dealgo. racopates Implemented since the last PWA. 10 eny, and the technology cotegory toobstiration, minimization, sampleficulation and be moderalian:.
- congligation through the most recent compliance nucit, the superted sate of completion of any changes resulting from the compliance main, and identify whether the count facility compliance and was a third party width.
  goreous 1.0 \$5005 and \$8.50
- (b) The completion date of the must recent anolden: investigation and the expectal data of completion of any changes resulting from the investigation.

# \$68.180 Emergency response program-

- (a) The owner or operator shall provide in the RMP the (a)lowing informaaloa:
- Do you have a written emergency teapogen plane
- (2) Does the plan include specific ac tions to be taken in mapones to all accidental releases of a regulated out-
- (0) Does the plan include procedures the informing the public and local agencies responsible for responding to accidental releases
- (4) Does the plan include information on emergency health care?
- (h) The date of the most recent review or update of the emergency respouse plan.
- (8) The date of the wood recent emergency response anadimy for employees.
- (b) The owner or operator shall prowhile the mamin and calaphone number of the total spency with which emergency. reapones activities and the smargency batambrook slickly senegast
- (c) The owner or operator shall list other Federal or state amergency plan-

requirements to which the stationary aparce is subject.

(5) FR 01726, Juze 20, 1506, as amounted at 64 PR 981, Jan. 6, 1995).

ВЕРВОТІЧЬ ЭКТК НОТА, АЦ ЕЗ РВСАТІН, ІЗА 500 550 was revised, effective Mar. 14, 2017.
 At 32 FR 8695, Jan. 25, 2017. this amendment was until Mar. 21, 2017.
 At 85 FR 10690, Mar. 16, 90)7, this amendment was further deleved entil Juze 19, 2011, AU 83 78, 21381, Jame 14, 20.7, Enter absendment was further dejected until Met 18, 2018, Pur tipe convenience of the eser, the revised text is see forth as fol-

# e66.180 Idlergoney response program and

- tal Che dener or operative shall provide up 12hr, 1264171
- Name, organizational affiliation, phone number and imail address of local summer-gency planning and magazase presentations with which the abstrances source lace occord satoi činčigency response efficts, priminant
- to §61.10(f)(f) or §56.50; (f): The face of the most recent coordina-tion with the local eracryency impacts a signptantions, paresent to KM KO And
- (3) A list of Federal or state emergency gian regularaments to which the elationery Applifica or explana-
- (b) The owner or operator shall identify in the RMP whether the facility law inequality stationary source or a non-responding sta-monary source, pursued to \$58.90.
- (1) For non-expanding statement sources. the award or against as shall allootyly
- do Por utationary sources with any regu-Estai taxis: substance beld us a province aliave the threshold community, whether the statiously source is anciuded in the community ranci gratey i response pius. de selopent usudar 42
- 9.8.6. 1998 pirewood to 681 995612 (II) For stationary sources with only remarked Cammanic robatonos held in a geograps shove the Carehold quantity. On detaict the moral recent coordination with the local fire department, mustains to \$68,900(2); (It:: What mechanisms are in place to no-
- they the public and stortgency respondent orner, thorse to a second for emergency (response): 2016
- (iv) The date of the most recent notifier. toon executes, as reginized in \$46,960.0
- (2) For temporalize stamonary sources, the owner or operator shall identify.
- the date of the most recent review and update of the emergency response plan, purvisant to §58 95(4),
- (B) The date of the most recent notifies. tion exercise, as required in 468,96(a):
- (iii) The date of the most repert field evercion, no required to \$58.95(5)(1). And
- the Tre date of the most repent tableton exercise, as regained in \$68.50(b)(2).

#### 40 CFR Ch. 1 (7-1-17 Edition)

#### 168.185 Certification.

- (a) For Program 1 processes, the swher or operator shall submit in the RMP the certification statement previded '() 5-58 [2(b)(4)]
- (b) For all other covered processes, the owner or encerted shall submit in the RMP a single certification days, to the best of the signer's Intowinder, information, and belief formed after restonable inquiry, the information submitted in lane, accorate, and complete.

#### 468,190 Updates.

- In) The owner or operator shall review and update the RMF as specified in paragraph (to of this results and submit to in the method and format to the central point operation by EFA as of the date of submitsion.
- (b) The emmer or operator of a Stationary service shall mylec and update the RMP submotted under §68.69 as follows:
- it: At least once every five years from the date of its initial arbinisation or must recent update required by paragraphs (b)(2) through (b)(2) of this section, whichever is later. For purposes of determining the date of initial submissions. RMPs attentited refers June 21, 1999 are considered to have been submitted on that date.
- (2) No later that three years after a newly regulated substance is first listed by KPA;
- (3) No later than the date on which a new regulated substance is that present in an already covered process shove a threshold quantity.
- (9) No later than the date on which a regulated substance to Dist present above a threshold quantity in a new process;
- (5) Within six months of a change that requires a revised PISA or lassed review,
- (6) Within six munits of a change that requires a revised offsite consequence analysis as provided in §68.36; and
- (7) Within six months of a change that afters the Program level that applied to any povered process
- (c) If a steadingly scaled is no longer subject to this part, the owner or operator shall submit a designstration of EPA within six (no)(the indicating that

the stationary source is no longer covered.

(51 FR 91728, June 20, 1598, as areasolati at 64 FT 15871, Apr. & 2004)

REFERENCE DATE NOTE. At 32 FR 10th, Jan. 10, 88) 190 was annumbed by uniting a sontendo as the end of paragraph (c) effective Mar. 14. 2011, at 35 39, 349, Jan. 35, 2017. At 32 FR 10568, Mar. 16, 2017, this amendment was much Mar. 21, 2017. At 32 FR 10568, Mar. 16, 2017, the amendment was forther delayed and June 13, 2011. At 18 FR 2013, June 14, 2011. Units amendment was further delayed that 1 7ch 19, 2016. For the convenience of the user, the revised text is set forth as follows.

## §GR.FRO C)pdales

(c) \* \* \* Fried to As-receivation the owner or operator shall meet applicable expecting and incurrent investigation requirements in resercance with \$664.48.68.60, and/or \$8.81.

# §88.195 Required corrections.

The owner or operator of a stasionary source for which a SMP was submitted shall contact the RMP as (cl-

- (a) Now accident history information—For any solidental release meeting the five-year solident history reporting enterm of \$50.42 and occurring after April 9, 2009, the owner or operator shall solimit the data required under \$563.00. \$3 (70(j)), and \$0.175(l) with respect to that somicine within an months of the release or by the time the RMP is updated under \$68.190, which space is \$3(len.
- (b) Emorgoney contact information— Beginning June 2: 2009, within one month of any change in the emergency contact information required under \$85.00(h(6), the owner or operator shall educate correction of that information.

(89 FR 16882, Apr. 9, 2006)

# Subport H—Other Requirements

BOOKER, HL PA 31728, Joue 20, 1964, unique o'Charwine molec

# \$88.200 Record keeping.

The paner or operator shall maintain records subperving the implementation

of this part for five years unless otherwise provided in subpart D of this part.

Exportive Date Note At 88 FR 4704, Jan 13, 898 200 was reclead, effective New 14 2007 At 82 FR 4899, Jone At 88 FR 4896, Jone At 88 FR 18968, May 16, 9811, this semandical was sucher didyol with Jane 38, 2017 At 82 FR 18968, May 16, 9811, this semandical was factor didyol with Jane 38, 2017 At 82 FG 2710, June 39, 2017, this amendment was Darther delayed until Ten 19, 2029. For the convenience of the user, the wided text is set forth as follows.

#### \$88,200 Recondline.

The corner or operator shall maintain proprie supporting the implementation of this part as the stationary source for the group, below objects and provided in subport to of this part.

#### §88.210 Availability of Information to she public.

- (4) The RMP required under subpart G of this part shall be available to the public under 42 U.S.C. 7424(c)
- (b) The disclosure of classified information by the Department of Defense or other Petanal agencies or contractors of such agencies shall be controlled by applicable (see regulations, or executive orders concerning the minutes of classified information.

Represent Dars Norm: At 82 FR 4505, Jan. 13 (8) 220 was revised offsective Mor. 14, 2017, At 92 FR 4508, Jan. 28, 2517, this ammodiment was tabil Mon. 21, 2017, At 82 FR 13960, Mar. 16 1017, this ammodiment was further delayed orbit Jane 19, 2017, At 32 FR 3319, Jane 14, 2017, this amendment was further delayed math Feb. 15, 2019, For the scarements of the other, the whilet that 19, 345 forth 28 follows:

#### 688.210 Availability of taformation to the public.

- (a) RMP something. The RMC required under subpart G of this part shall be avoidably to the public coder 42 U B C. 1646c) and M CFB part 1400.
- the Comment Americal Softmending. The owner of operator of a stationary source grain neural by any member of the public, the following electrical beauty information for all regulated processes, no applications:
- Regulated substances information Number of regulated substances held in a property;
- (2) Safety data sheets (200) SIPS for all regulated substances located at the footbasy; (i) Activities to taking unformation Provide the Eve year accordant history uncompany, required to be repaired under 168.42.

- (4) (Opengency copposes program. The following summary information concerning the distribution of summary source's compliance with \$68.100(d) or the emergency response provisions of subpart 6.
- (i) Whether the stationary source is a reopen-ling stationary source or a non-responding statement source.
- ills Patite and phone number of local entergency response organisations with which the ewner or operator that operatinated entergency response efforts, yeasonable (\$80.00)
- (SH) Pay stationary settings audject to \$58.55 paucodities for latinearing this public and local emergency response agreems under accidental releases:
- (5) Exercises à l'ist of scheduled extreises required audet §68.58, and
   (6) LBPO contact intermettes l'acturée
- (6) LBPO Contact Intermedition Include BECO name, phone number, and web address to available.
- (c) Nothication of autiliability of information. The awate of aperatur shall provide auguing nothication on a company Web site, social media pisoforms, or through other poblicly accessible means that:
- successible smeals that:

  11: Indexnington specified as paing-app (1)
  of this section is evaluate to the public apper
  common. The multipactor shall
- Specify the information elements, idensitied in prograph (t) of this rection, that can be requested; and
- (ii) Provide Instructions for how to request the information (e.g. erroll), matting without, smooth telephone or Web size request?
- (3) Identitia where to decreas information on community preparations, if available, including shelter in place and evacuation procedures.
- (ii) The number of provide requested information. The owner or operator shall provide the enquested information uniter paragraph (b) of this section within 45 days of reactiving a paquest from any merches of the public.
- (e) Public meerings. The owner or operator of a statilatery somme shall hold a public meeting to provide information required under \$68.42 as well as other relevant chemical bases of information, such as that described in parrigroph (b) of this section, to later than 90 days after any accordant subject to reporting under \$56.42.
- It Chanted mormation. The disclosure of talesmation placeding by the Department of Defense or other Federal agencies on contracture of such agencies death by controlled by applicable laws, regulations, or executive orders concerning the release of classified in termation.
- (y) CSI All awone or operation exerting 1951 for telecometeen required under this exertion that provide a samplined version to the pottle. Assertation of CBI oblines whall be in the same manner we required in \$10,150 and 55,155 for information occasiond in the RBIP.

# §68.215

# 40 CFR Ch. I (7-1-17 Edition)

required under exhibits C of this part As provided under 188,15(15),81, as series or operator of a stationary absence may not claim. By year accident biscay information as CIJ As provided to \$68 to(c)(2), as owner or operator of a scationary double asserting that a chambral name is 13% shall provide a scatter operator or class name as a subjection extensive or class name as a subjection.

# 268.216 Permit content and sir permitting authority or designated agency regularizats.

- (a) These requirements apply to only stationary source subject to thus part 6d and parts 70 or 71 of this chapter. The 90 CPR pert 70 or part, 71 permit for the stationary source shall contain:
- II. A statement listing this part as an applicable requirement;
- 12: Conditions that require the source owner or operator to submit:
- (i) A compliance schedule for meeting the requirements of this part by the data provided in §88,3000 or
- (ii) As part of the compliance certification submixted under 46 CFR 70.55(2.5), a certification statement that the source is in compliance with all requirements of this part, including the registration and submission of the PMP.
- (b) The owner or operator shall submit any additional relevant information requested by the air permitting author(by or designated agency.
- (c) For 40 CFR part 50 or part 51 permins (spine) gates to the deadline for registering and submitting the RMP and which do not contain permit enditions described in paragraph (a) of this section. The owner of Operator of air permitting authority shall inside a permit revision of respecting according to the procedures of 40 CSP, 70.7 or 70.7 to the procedures that terms and conditions consistent with pagegraph (a) of this section.
- (1) The state may delegate the authority to implement and enforce the rechtrements of paragraph (et of this section to a state or local against of agencies other than the air permitting authority. An up-ra-date copy of any delegation instrument shall be maintained by the six permitting authority. The state may enter a written apreciately with the Administrator under which RPA will implement and enforce

the requirements of paragraph (c) of this section.

- (e) The our permitting authority of the agency designated by desegation of agreement under paragraph (d) of this section that, at a minimum.
- (3) Verily that the source owner or operator has registered and submitted an RMP or a revised plan when required by this part:
- (2) Vetily that the source owner or operator has submitted a source perturbation or in its absence has submitted a compitance scheduly consistent with paragraph (a)(2) of this section.
- (3) For some or all of the sources subject to this section, use (the or store modianisms such as, but not hunded to, a completeness check, source audits, resord reviews, or facility impactions to ensure that pormitted sources are in completeness with the requirements of this part, and
- (4) Initiate enforcement action based on paragraphs (e)(1) and (a)(2) of this section as appropriate

#### 648.250 Audits

- (a) an addition to inspections for the purpose of regularity development and enforcement of the Act, the largiturenties regardy shall periodically endful RMPs submitted under subpart C of this part to review the adequator of such RMPs and require revisions of RMPs when necessary to example complishes with subpart C of this part.
- (b) The implementing agency shall select stationary sources for number based on may of the following criseria:
- Accident history of the stationary source;
- (2: Accident Intacopy of other stationary sources in the same industry:
- (3) Quantity of regulated schetanoes present at the standard square.
- (4) Lenstian of the stationary source and its proximity to the public and environmental receptors;
- (5) The presence of specific regulated substances;
- (6) The basards identified in the RMP, and
- (7) A plan providing for neutral, caudom oversight.
- (c) Exemption from addits. A staliouxry source with a Star or Ment

5 68.220

ranging under ORHA's voluntary presention program shall be exempt from and to under paragraph (h)(2) and (b)(V) of Units soction.

Hade younge grounding edT (b) have access to the stabliciary source. supporting documentation, and any area where an accidental release could CODULT

(e) Based on the audit, the implementing agency stay uses the owner or operator of a stationary source a written preliminary determination of necessary revisions to the stabionary sourch's RMP to example that the RMP mests the emecans of subject C of this part. The preliminary determination shall include an explanation for the basis for the revisions, reflecting indusray standards and guidelines (such as AICOROCES goldelines and ASMR and API standards) to the extent that such standards and guidelines are applicable, and ehalt mobile a trimbatio for their implementation.

(f) Written response to a preliminary desermination. (1) The awner or operator shall respond in writing to a preliminary determinación made in except-ance with paragraph (e) of this section. The cosponed shall state the owner or operator will implement the revisions contained in the posigninary determination in accordance with the firmesable included at the preliminary de-termination or shall state that the owner or operator rejects the sevisions in whole or in part. Put each rejected revision, the owner or operator shall explain the basis for rejecting such bevieson. Such explanation may include sabstatute reviecone.

(2) The written response under paragraph  $(\Gamma(1))$  of this section shall be recopyal by the amplementing agency within 90 days of the issue of the preliminary determination of a shorter period of time as the implementing apency specifies in the greitminary determinación as no season to protect themporeum and the environment Prior to the written response being doand spon written request from the owner or operator, the implementing agency may provide in writing additions, time he the response to be re-

(g) After providing the owner or operator an opportunity to respond under paragraph (f) of this specion, the implementing agency may issue the owner or operator a written final determination of necessary revisions to the stationary source's RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under paragraph (e) of this section of many adopt or middley the substitute revisions provided in site response under paragraph (I) of this section. A final determination that silipits a constan rejected by the owner or operator shall include an explamation of the basis for the revision. A final determination that falls to adopt a substituta revision provided under paragraph (D of this section shall include an explanation of the boots for finding such substitute revision ungesaonahle

th: Thirty days after completion of the notions detected in the limplemendation schadule set in the final determinalion under paragraph (g) of this eaction, the owner or operator shall be in violation of suppars G of this part and this section unless the owner or operator revises the RMP prepared under subpart G of this part as required by the final determination, and submits the ravised RMP as regulard uadez §38.150.

(i) The public shall have necess to the preliminary deserminations, rasponses, and final deserminations under this section in a manner consistent with

5 8R 239

(j) Nothing in this section shall preclude, idmit, or interfere to any way with the authority of RPA or the state to exercise its antomentant, investigatory, and information gathering authomstes concerning this part under the Ast.

# Pt. 68, App. A

# 40 CFR Ch. 1 (7-1-17 Edition)

# APPRIOR A TO PART 68—TABLE OF TOXIC ENDOYMES PROBLEM \$5000 FOR PARTY.

Cas rai	Description	Towc over point (mgs.)
		0.001.
197-22- <b>1</b>	Acrobin [P-Propers]	0.001
1'4-68-8	Acry control (p. Program visital) Acry control (p. Program visital)	0.0009
107-18-6	44 Supre (2 Proper List) 4 June (2 Proper Learne)	U Use
i-)7−1 i <del>-0</del>	44/azme (21'rocer, 1-azme)	0.0032
res4 -41- F	America (August 20% of (1686) America Indiania	0.14
7984-41-7	Service (part 27% or (1890)	0.14
7784-M-1 7734-42-1	American Indikasia	0.010
7734-42-1	Arina	0 00 K
70234-34-5 7637-67-7	Boron n. or ordo (Rorano, Michiga)* Baran Bultared (Bultare 14 curs*) Baran Wilsonda compound with mathyl albert (* 17 (Boron, this conjunited method (* * * * * * * * * * * * * * * * * * *	0.000
16140-2 161-49-4	Grand (1975) Ch. (2014) A. (1974) A.	0 023
775 66 B		a nes
75-15-0	Cursor Studies	ù 16
7792-00-6	Sharrow	0.008
73049 (A.A	Carrier de l'Ade Charrer Cranine dinière Yithinine adds (GEG)	0.000
97-66-3	(Maggapen (Methods, National)	040
592 <del>-66-</del> 1	Chicatestrat after Netherla. (0)(0)(chicate)	9 000
127 30 E	Chickony and reason rates (Mathema Chickens Space)	0.0010
1176-30-0	Crater-dontique (2 Butera)	0.029
189-78-4	Consideration of the Constant	9130
38-77	Cycleger device Cyclegepares (Dyckerses Arc) Decrete Desptyledepositive (Sec.), Octobromatics ()	4 16
9/27-45-7	Distant	a pui
75-78-5	Demolyshed 4: and out PMA in a OCION OR BARENTI.	11 10/11
17-14-7 to	1.: Unjoine Tradition is the section is 1. 1. 1- Description	9.012
GE-9E-6 .	1; Cultichyng i saine (Hydrazine, C. Homenn)   Each dechyddir (Clorene, Idricionelly (H)	ฉบาย
127-15-3	Bily (cook) ning (1,2-(type-distrate)) Sily brane and (4) order a Fit where no tin (Countra)	4 4 A
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/5->7-B	Fift-Hene rollin (Colenza)	9 190
757-41-4	Filt-three rollfo (Colors) Filt-colors Fil	0.000
SG-GD-D	Forms (Myder States)	0.001
170-14-9	Undersolve	4011
806 -11-6 2842 PJ. O	Forms old-gift Striktoni Forms Hydrocke Hydrocket Hydrocket odg conn 37% or govern	0.000
74-95-8	Metrocorre: and	0.011
M47-(4-0	Mydrocyanet and	0,000
7584-30-3	Historian Groupe Hadrid Later acid from 600 or given a 400 dies aniliare acid	9 016
7783-67-5	Historgen ante note:	2000
rrati+6+4	Hydrogen 44864	g D42
3483-40-6	Son, Seriascinopol (157 Seriose) (FRK-Seri, (TRH-E-15))  arthdymostic (Propagardraz, 2-mePg).	0 000
8 <del>-82-0</del>	Kepiopa galorckimass (Carbanactiones acci. 1-menytragi escri	U 14 0 10
(15-23-6   68-66-7	гуургоруу даартуулгана дуугуулганан жал тотоогуулган аван	4,008
74-e7-9	Multinumptor Mile (2 Procedentalists, 2-months) United colored (Mail-new, others) Value of process make (Curponocrasido acid monthematic	0.65
M-25-1	Same were more (Carronces) life and more were	a not
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13 42.5	Personie was "Elementer vost wort)	a am
5-44-8	Markage (Carbook &Crista)	0.000
321 <u>–</u> 51–2 .	Marigone (Cabbook (MCRO-GA) Phosphere	9 000
2025-b) -8	Procedures countings of Procedure accorded	9,000
7747-12-2	Phasphane treblands (Phasphanes Sichkania)	0.009
-9-29-4	Parties	0 002
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29-81-8	Propri chlorologneta (Cerbanocidoneta eral, unsuytante)	0.010
14-54e	Promiseration (Apadon, 2-metry-)	0 17
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7446-09-5	Sear devise periodical	0.00 <i>0</i>
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#### As Arrest in 604.20 of the part

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EAS No.	Undered name	Total and-
509-14-5	Talksyllone (Myther) (A. Tricker)	0.0040
	Tearren febethiotide [Titoren erforde   TiC4) (Tit/-)	0.000
	Totalene 2,4-55pg years (Carusea, 2,4-diux) arake-h-main,4(	0.0673
	Futurno 2.6-Descriptivato (Bennena, 1.8-descriptivatió methyl)	0:00
	Following demonstratio (unique/Fed plane) (Balanese 1.3-develope (Amellige)	4,0000
	Transity strangegoe (Silane, chiorannar No)	0.200
103-05 4	high address flow until the one load emery) ested	0.26

[6] FR 22784, June 50, 1256, as amended at 62 FR 4512, Aug. 26, 1897.

# PART 69-SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLÉAN AIR ACT

# Subport A-Guom

Эœ.

New exemptions. 60.10

19.13 Continuing exemptions.
89.13 Title V conditional exemption.

# Şubyçalı B—American Samoai

69.21 New exemptions, (Meterosit) 69.22 Title V conditional exemption.

# Subport C-Commonwealth at the Nothern Mattano Islands

(843) New exemptions.

50.32 Tielo V conditional extemption

# Subport D-The U.S. Virgin Islands

\$9.41 New exemptions.

#### Subpari É-Áleska

MAL. Minter vessore Stosel fool. 59 52 Non-motor vehicle (less) find

Aumeus.nv. 48 U.S.C. 7545(c). (g) and (d). and 9835-L

Spence 50 FR 25671, June 20, 1585, unless utherwise notail.

# Subport A—Gyami

### F68.81 New exemptions.

(a) Pursuant to section \$35(a) of the Gigan Air Act ("CAA") and a petition submitted by the Coverent of Buran. "Politica"", the Administrator of the Protection Agency Environmental PEPA" conditionally exempts electine generating units on Gusin from certain CAA requirements.

 A waiver of the degationment to obtain a prevention of alguitteant dese-

moration ("PSD") permit prior to construction is granted for the alectric generating points identified in the Peti-Mon as Cabras Maeal No. 1. the Tempo project, and three 6-megawatt diasel generators to be constructed at Orate. with the foll-twing conditions:

(I) Bach electric generating unit shall not be specated into a time: PSD pormis to issued for chac unit;

(ii) Buch elected generating unit. shall mut be operated bottl that both complies with all regularements of its PSD permit, anglishing, O necessary, retwicting with the best swallstile control technology ("DACT");

(III) The PSD application for each electro generating onto all the deemed considers without the aubenittal of the required one year of cosite meteorological dasa, however, £PA will not sauce a PSD permit to such a unit prior of submossion of such data or date which the EPA finds to be an equivalent and acceptable aubstatute; aπd

(Iv) If any elecuse generating until covered by this paragraph is operated land) a la command esta of reing restin PSD permit of without BACT equip-ment that electric generating unit shall be deemed in violation of dils walver and the GAA baginging on the naideurateuro de unemerchencio le east of that aids

(2) A waiser of the three modulations. ment area reguirements (a construe Mon ban, the use of lowest achievable emission rate control equipment, and emission offich requirements) carremain amplicable to the Cabine-Pius area is greated for electric generating units with the following conditions:

 A tuwer and meteorological sta-Man shall be constructed in the Cabras-Pit: area by May 1, 1986.

4696 Federal Register / Vol. 82, No. 9 / Fabley, January 13, 2017 / Roles and Regulations

risk or environmental justice (Ef) communities.

EPA believes there were reumerous apportunities for the public to provide meaningint ingut on this final cule. This figual cale was developed following extansive public footback through Executive Order 13550 listening sessions, բանաշ commants on the RFI and the proposed colemaking, and the public hearing held as March 29, 2016. EPA has imporporated requirements in the final rule to provent accidental releases, mitigate the Impacts of releases that do occur, and share observical. hazard information with the public.

# K. Coograssianal Baview Act (CRA).

Thus arteon is subject to the DICA, and the EPA will submit a rule report to each House of the Congress and to the Conspiration General of the Carited States. This action is a "major rule" as defined by 5 U.S.C. 804(2).

# List of Subjects in 40 CFR Part 60

Epic momental protection. Administ wilve practice and procedure, Air politicem control, Chemicals, Ffazerdous autorences. Intergovernmental reletions, Reporting and recordisesping requirements

Dated, December 20, 2016.

#### Glop McCarthy.

Arleniaistrarea.

For the reasons set out in the proamble, title 40, chapter I, part 68, of the Code of Poderal Regulations is omenned as follows:

# PART 68-CHEMICAL ACCIDENT PREVENTION PROVISIONS

 1. The authority citation for part 66. tontimies to read as follows:

Anthority: 42 H.S.C. 7412(r), 7601[n)[1]. 7001-7601

 2 Amend § 58.3 by adding in siphabetical order the definitions
"Active measures" "CBI", "Inharcatly
safer technology or design", "L6PC"
"Passive measures", "Practicability"
"Propognical measures", "Root conse",
and "Third-porty audit' to road as faltaws:

# §68.3 Definitions.

Active greatures mean class management measures as engineering controls that rely on mechanical, or ather energy input to detect and expend to prixess deviations. Examples of active measures analyde alarms, sefety instrumented systems, and detection hardware (such as Independ on assistors).

CBi maana contidenna) business intormation

Inherently sofer technology or design means risk management measures that application are of regulated substances, substitute less hazardous substances, moderate the use of regulated anithtronges, or simplify nuvered processes in order to make ancidental releases less likely, or the impacts of such releases less severe.

LEPG means local emergency. planning committee as established under 42 D.S.C. 11001(r.). . . . . .

. . .

Passive measures meeti risk management measures that use design. features that reduce either she frespionely or consequence of the baserd without human, mechanical, or other energy input. Examples of passive measures include pressure vessel designs, dikes, borma, and blast wolks: . . .

Procusability means the capability of being successfully accomplished within a reasonable time, excounting for economia, environmentel, legal, social, and technishingical factors. Brightmentel factors would include consideration of petential transferred rijską fozinow cisk reductieci measuces.

Procedural aleasures mean risk management measures such as policies reperating procedures, fraining. administrative controls, and emergency response actions to provent no minimize incidenta

Root couse means a fundamental. underlying, sy×torn-rulotod r∋ason why sis intedent occurred.

Titilad-party and it means a compliance sodit conducted pursuant to the requirements of §68.59 as:\$/cr § 60.90, performed on led by an entity. had vidual or firm) meeting the competency and independence described in § 68.59(c) or § 68.80(c).

- 3, A mend § 68,10 by
- 🔳 al. Revioung paragraph (al).
- b. Redesignating paragraphs (b). threagh (I) as paragraphs (f) through (j);
- c. Adding new paragraphs (k) through (e); and
- d. Revising the newly designated. paragraph (f)(2).

The revisions and additions road as

# § 68.1fl Applicability.

(a) Except as provided in paragraphs (b) through [e] of this section, an owner. an agerator of a stationary source that has more than a threshold geantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of this part no later than the latest of the following dates

(1) [mai: 21, 1999,

Three years after the date on which a regulated substance is first listed under § (M.130;

3) The date on which a regulated. substance is first present above a threshold quantity in a process; or

(4) For any revisions to this part, the utfective dute of the final rule that

revises this part. (h) By March 14, 2019 the owner or imperator of a stanonary source shall comply with the omergency response coordination activities in § ឥន.9%.

- (c) Within three years of when the owish or operator determines that the stationary source is subject to the emergency response program renotications of § 60 95, pursuant to § 68 RO(a), she owner or operator must develop and implement an amergency response program in accordance with
- (d) By March **1**5, 2001, the owner or operator shall comply with the following provisions promulgated on Japuary 13, 2027.

Third-party audit provisions in: §§68.50(f), 66.50(g), 69.50(h), 69.59, 68.79[H, 68.79[g), 68.79(h], and 68.80;

(2) Incident investigation root cause analysis provisions in §6.68.60(d)(7) and 68.81(d)(7);

(3) Safer technology and alternatives. analysis pagyisions an §68,67(c)(8):

(4) Bineignous response exercise. provisions of \$48.96, and;

(5) Availability of information provisions in § 68.210(b) through (e).

(e) By Merch 14, 2022, the owner or eperator shall comply with the risk management plan provisions of subpart G of this part precialigated on fancing 13, 2017. [0] 1 1 1

(2) The แเรางพอง to a ravic or Datababila endpoint for a worst-case. release assessment conducted under subgart Bland § 68.25 is less than she distance to any public receptor, as doflas¢ ນາ ຈີຍິຄ.3, ຄາຕໍ່ເ

■ 4. Amend § 68.12 by:

 ■ a. Revising paragraphs (c)(4) and (6), and adding paragraph (c)(f); and

b. Revising persyraphs (d)(4) and (5), and adding paragraph (d)(6).

The revisions and additions read as follows:

# 468.12 General requirements.

4697

[4) Coordinate response actions with local entergency planning and response agencies as provided in §68.91:

(5) Ocyclop and implement an өөсөгдөлсү гезровка ргадант, анд conduct exercises, as provided in 59 60.90 to 68.95; and

(d) Submit as part of the RMP the data an prevention program elements for ĭ⁄nogram 2 processes as provided in 948 170. (d) 1 1

(4) Cherdinate response actions with Joual, emicroperacy planning and response egenicies as provided in 568.90;

(S) Ibovejop oad Implement an emisgenity response program, and conduct exercises, as provided in हुडु ५४.१<del>५। १० जी.</del>96; राजवे

- (6) Submit as part of the RMP the date on prevention program elements for Program 3 processors as provided in §88.175
- 5, Amend § BH. \$8 by revising. parograph (a)(1) to read as follows:

#### §68.48 Safety Information.

(a) \* \* \*

- Safety Data Sheets (SDS) that most the requirements of 29 GFR 1910.1200(g);
- 6. Amend § 68 50 by revising. paragraph (a)(2) to read as follows:

# §68.50 Hazard review.

(a) \* \* \*

- (2) Opportunities for equipment malfauctions of human errors that raidld cause an accidental release, confuding findings from incident investigations.
- 7. Amend§68.54 by revising paragraphs (a), (b), and (d); and addang panigraph (e) to read as follows.

# §68.3¢ Training.

(a) The owner or operator shall ensure. that each amployed prosently involved in operating a process, and each employes newly assigned to a covered process have been trained or tested. competent in the operating procedures. provided in \$69.52 that protain to their dinties. For those eurployees already operating a process un June 21, 1999. the owner or operator may certify in writing that the employee has the recoined knowledge, skills, and aidlities to safely comy out the duties and responsibilities as provided in the operating procedures.

(b) Refresher Invitating Refresher. y isva tesel te bebivot q ed Lada gaioticit three years, and more often if necessary, to each employee Involved in operating a promosa to esistino that the esiployee

understands and adheres to the current operating proportions of the process. The owner or operator, in consultation with the employees operating the process, shall colormine the appropriate frequency of refresher training

[d] The owner or operator shalk easure: that employees involved in operating A process are trained in any updated or new procedures prior to startup of a process after a major change.

(e) For the purprises of this section, ttie serm employee alan includes supervisats teaponable for directing process operations.

■ B. Amend § 68 58 by revising paragraph la! and adding paragraphs (f) thraugh (a) to asid as fallows:

#### §150.50 Complemoe svelite.

(a) The award or eporator shall certify that they have evaluated compliance with the provisions of this subport for much cuvered process, at least every three years to verify that the procedures and practices developed under the rule. are adequate and are being followed. When required as set forth in pategraph (2) of this section, the compliance midle. shasi be a third-party oudit.

 Third-party audit applicability. The next required compliance audit ahadi bela finird-gelog etidit when one of the fallowing conditions apply-

 An accidental release meeting the criteria in § 68.42(a) Isom a Covered prixess in a stationary source Lus асситтей; ак

(2) An implementing agency requires a third-party audit due to conditions at she stationary source that could lead to șin acendeciaŭ releaso of a regulated substance, or when a previous thirdparty audit failed to meet the manpetency or independence collects of \$ 88.59(c).

(g) Implementing agency notification. and appeals. (1) If on implementing agency makes a proliminary determention that a third party audit is n-cessary pursuant to paragraph ( $\Pi(2)$  of this section, the implementing agency will provide written natice to the Owner. or operator that describes the busis for this determination.

(2) Within 30 days of receipt of such. written notice, the owner or operator anay provide information and data to. and may outsuft with, the implementing agency us the determination. Thereafter, the implementing ageisty will provide a final determination to the owner or operation.

(3) If the final determination requires a third-party agent, the owner or

operator shall comply with the requirements of § 68-59, passuant to the schedule in paragroph (h) of this

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(4) Appends. The owner or operator. may appeal a final determination toade by an implementing agency under paragraph (g)(2) of this section within 30 days of receipt of the final determination. The appeal shall be made to the EPA Regional Administrator, or for determinations mude by other implementing agencies, the administrator or director of such implementing agency. The appeal shall Contain a clear and concert statement of the issues, facts in the case, and any nt. no.romedini lanciotida arcevolet roviewing the appeal, the implomenting agondy may réquest additional information from the owner or operator. The implementing agency will provide e wither, สิกด์ decision on the eppeal. to the owner or operator

(h) Schedule for conducting a thirdparty audit. The audit and audit report shall he completed as follows, unless a different timefreme is specified by the implementing agency.

(1) For third party sudits required pursuant to pringraph (E(1) of this section, within 12 months of the release;

For taird-party and its required. pursuant to proagraph (E(2) of this section, within 12 months of the dute of the final determination pursuant to paragraph  $(\mathfrak{gl}(2)$  of this section. However, if the final determination is appealed pursuant to paragraph [g](4) of tins section, within 12 manths of the date of the final decision on the appeal.

■ 9. Section #8.59 is added to subpart U to read as follows:

# §68,59 Third-party audits.

(a) Applicability. The owner or operationshall engage a third-pairty to conduct an audit that evaluates compliance with the previsions of this subgazt in agagedance with the regul remocts of this section when either critiation of § 59.58(f) is met.

(b) Third-party analitors and antilling trains. The owner or operator shall

[1] Engage's third-party auditor. meeting all of the competency and independence criterie in paragreph (c) of this section; or

[2] Assemble an auditing team, led by a third-party auditor meeting all of the competency and independence enterial In paregraph (c) of this section. The leam nayy Included

(i) Other couplayees of the third-party acditor firm meeting the independence erhterin os paragraph (c)(2) of this section; and

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(ii) Other personnel not employed by the third-party auditor firm, including

facility personnel.

- (c) Third-party suditor qualifications. The owner or operator shall determine and decreases that the third-party auditor(s) meet the following competency and independence requirements:
- Competency requirements. The third-party auditor(s) shall be.
- (i) Knowledgeable with the requirements of this part:
- Fig. Experienced with the stationary source type and processes being audited and applicable recognized and generally accepted good engineering practices, and
- jiii) Trained and/or certified in proper auditing (coloriques.
- (2) Independence requirements. The third-peny auditor(a) shall:
- (a) Act importably when performing all activities under this accious
- (ii) Receive no financial benefit from the outcome of the audit, upon from payment for auditing services. For purposes of this pangauph, retired employees who otherwise settisfy the third-party enditor independence criteria in this section may qualify as independent if their sule continuing financial attachments to the owner or operator are employer-financed or runninged retirement and/or health plans:
- (iii) Not have conducted past research, dovelopment, designconstruction services, or consulting for the owner or operator within the last two years. For gurposes of this requirement, consulting does not include performing or patticepating in third-party audits pursuant to 958,58 oc 588.80. An audit firm with personac) when before wicking for the auditor. anaduated research, development. disago, constauction, or consulting survices for the owner or operator within the lest two years as an employed or contractor may meet the requirements of this subsection by easuring such personnel de not participate in the audit, or manage or advise the audit team concerning the audit;
- (-v) Not provide other business or consulting services to the owner or operator, including advice or easistance to implement the findings or recommendations in an additional for a period of at least two years following submission of the final additionant.
- (v) Ensure that all third-porty personnes involved in the audit sign and date a conflict of interest statement documenting that they meet the Independence raiseria of this paragraph; and

- Ivil Basure that all third-party personnel involved in the audit do not accept future employment with the recent maperator of the stationary source for a period of at least two years following submission of the Engl audit report. For purposes of this requirement, amployment does not include performing or porticipating in third-party audits pursuant to § 68.59 or § 68.60.
- (3) The auditor shall have written policies and procedures to enable that all personnel camply with the computency and independence requirements of this section.
- (3) Third party auditor responsibilities. The owner or operator shall ensure that the third porty auditor:
- Munages the sudit and participates in sudit initiation, design, implementation, and reporting;
- (2) Determines appropriate volos and asponsibilities for the audit lean; mainhers based on the qualifications of each team member,
- (3) Prepares the audit report and where there is a term, documents the full andit team's views in the final audit report.
- (4) Certifies the listal and it report and its contents as messing the requirements of this sertion; and
- (5) Provides a copy of the audit report to the region or possible.
- to the owner or operator.
  (e) Andit report. The endit report shall.
- (1) Identify all persons participating on the audit team, including names, titles, employers and/or affiliations, and summaries of qualifications. For thirdpurry auditors, include information demonstrating that the competency requirements in paragraph (c)(1) of this section are met;
- (2) Describe or incorporate by reference the policies and procedures required under paragraph (clf3) of this section:
- (9) Documens the auditor's evaluation, for each covered process, of the owner or operator's compliance with the provisions of this subpart to determine whether the procedures and practices developed by the number or operator under this rule are adequate and being followed;
- (4) Document the findings of the audit including any identified compliance or performance definiencies;
   (5) Summarize any significant
- (a) Sommarize any significant devisions (if any) between draft and final versions of the report; and
- (6) Include the following certification, signed and dated by the third-party auditor or third-party audit team member leading the audit:

I regulfy that thus RMP corepliance audit report was proposed under thy direction or

- supervision in accordance with a system designed to assure that qualified personnal property gather and evaluate the Softmarkin upon which the study is based. I firether centrly find the audit is based. I firether centry find the audit mass and goted and this report was prepared purposent to the auditionarity of subject 5 of 40 CPR part 65 are help other applicable auditure, comprehensy, independence, ampartiality, and conflue of raterest standards and protocols. Based on my personal knowledge and experience, and dispulsy of personnal involved in the audit. The information subinitied herein as true, accurate, and complete
- (f) Third-party audit findings—(1) Pindings response report. As soon as possible, but no later then 00 days after tecetving the final audit report, the owner or operator shall determine an appropriate response to each of the findings in the audit report, and develop a findings response report that includes:
- (i) A rapy of the final codit report,
   (ii) An appropriate response to each of the burst report findings;
- tiii) A schedule for prompely addressing deficiencies, and
- fiv) A certification, signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the stationary suggests stating:

Fremily under penalty of law that Dieve engaged in third purty to perform or head an end): team to conduct a third-purty nurist to accordance with the macinements of 40 CPP (№ 50 and the: the attached RMP compliance) audu report was received, reviewed, and responded to under thy alreadon of supervision by qualified generated. Truther comisy that appear stigle responses to the fittelsings have been identified and chilicimentus were corrected, or ere being carrected, consistent with the equitaments. совебрия СтоГий СФК рим 180, ав Socuration berein. Basis on my personal knowledge and experience, or inquiry of personnel involved an evaluating the report fundicings and newcontaining appropriates responsible the Endlings, the information subinitted herein is true, accurate, and complete. I am awner that there are significant penalties for making false material. atatements representations, or condications. including the possibility of finos and langassalment for knowling violentons.

- (2) Schedule implementation. The connector operator shall implement the sole-dule to address deficiencies identified in the audit findings response report in paragraph (0)(1)(iii) of this section and document the action taken to address each deficiency, along with the date completed.
- (1) Submission to Board of threators. The award or operator shall immediately provide a copy of each document required under perographs (f)(1) and (2) of this settlen, when completed, to the eward or operator's

oudit committee of the Board of Dalectors, or other comparable. committee or individual, if applicable.

- (g) Recordkeeping. The owner or operator shall retain at the stationary sounts, the Ityo most recent final thirdperty audit reports, related fladings response reports, documentation of actions saken to address definiencies. and related records. This cognitromant coes not apply to any document that is: more than five years old.
- 10. Amend § \$8.60 by:
- a. Revising paragraph (a);
- b. Redesignating gazagraphs (c): through (f) as paragraphs (d) through lat.
- c. Adding a now paregraph (c): and
- d. Revising the navely designated paragraphs (d) and (g).

The revisions and additions read as

# 988.80 heidem invostigation.

(a) The awrier or aperator shall investigate each incident that:

- Roselted to a catastrophic release. Simulating when the affected process is decommissioned or destroyed following, or as the result of, an incident); ot
- (2) Could research virtue resulted in a catastoophic release (i.e., was a near rnies)
- (n) An incident investigation team shall be established and consist of at Joast one gerson knowledgeable in the process involved and other persons with appropriate knowledge and experience to theroughly investigate and adolyse. the incident.
- (d) A regart shall be pregared at the genelusian of the investigation. The zaport skall be completed within (2 reporting of the incident, notess the implementing againty approves, in writing, an extension of time. The report shall include:
- (1) Date, time, and location of Incident;
  - (21 Date investigation began;
- (3) A description of the incident, in: dsroppingscal order, providing all. rate linavaieu
- (4) The name and amount of the art are beviower constrains figurelage. release (e.g., fam. explosion, toxic gas lines of containment) of year miss and the duratica el the evolut:
- [5] The consequences, if any, of the provident including, but not brained to: iujuries, fatalities, the comber of people evacuated, the number of people shoftared in place, and the impact on the environment:
- (ii) Emergency response actions taken: (7) The factors that contributed to the Incident including the initiating event,

direct and indirect contributing factors, and rook causes. Rook causes shall be determined by conducting an analysis. tor each incident using a reagairm method; and

(8) Any recommendations resulting. from the investigation and a schedule for addressing them,

- (g) Indident investigation reports shall be retained for five years.
- 11. Amend § 68.65 by revising the flest sentence of paragraph (a) and the note to poragraph (b) to read as follows:

# § 68.65 Process safety information.

(a) The award to operator shall. complete a compilation of written. process safety information before conducting any princess hezard analysis. required by the rule, and shall keep. process safety information up-to-date. \*

Note to pacagraph (b) Selety Data Sheets [SDS] mixting the tequirements of 24 CFR 1910 1300(c) may be used to comply with this requirement to the extent they contain the information required by paragraph (b) of this section.

- 12. Amend § 68.67 by:
- a. Revising paragraph (c)(3); b. Amending paragraph (c)(6) by removing the word "and."
- C. Antending paragraph: hal(2) by removing the period at the end of the penagrapší and adding "; and" in ita place: and
- d. Adding paragraph (c)(a).
   The revisions and additions read as foliows:

# § 68.67 Process hazard emplyala.

- . (c) · · · ·
- (2) The Empings from all incident investigations required under § 68.81, as well as any other process of failure scenariost
- (0) For processes in NAKE 322, 324, and 325, sale: technology and alternative risk managament measures. applicable to eliminating or reducing risk from process buzaris
- (i) The owner or operator shall consider in the following order of proference inherently safer technology or dosign, passive meanires, artive. measures, and procedural measures. A combination of tisk poppogement meesures may be used to achieve the desired risk reduction.
- (if) The owner or operator shall datermine the practicability of the inherently safer rechnologies and designs considered.

■ 13. Amend § 68.71 by adding peragreph (d) to read as follows:

# § 98.71 Training.

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- (d) For the purposes of this section, the term employed also includes supervisors with process operational responsibilities.
- 14. Amond § 68.79 by revising: Pacagraph (a) and odding paragraphs (f) farmigh (h) to read as follows:

#### §69.78 Compliança audite.

- lal The owner or operator shad certify. that they have evaluated compliance with the provisions of this subpart for each covered process, at least every three years to vorify that the procedures and practices developed entler the rule are adequate and are being followed. When required as set forth in paragraph. (f) of this section, the compliance audit shall he a third-perty audit.
- Third-party analt applicability. The pest required nompliance audit shad be a third-party audit when one of the following conditions apply:

An accédentul reloase méeting the uriterie in §68.42[a] from a covered рганиях ат а ятверопагу войтсе фав podurená: or

(2) An implementing agency requires a third party audit due to conditions at the stationary source that cauld lead to an aosidantal release of a regulated. substance, or whom a previous third party audit fasted to meet the campetency or independence cratecia of

§ 69.404(c). (g) Implementing agency notification. മൂര് മൂറ്റായ്ട്ട. (1) if an implementing agency makes a preliminary determination that a third-party audit is necessary pursuant to peragraph (f)(2) of Erik section, the implementing agency will provide written notice to the owner. up operator that describes the basis for this determination.

(2) Wirbin 30 days of mexipt of such written nesico. Lite owner or operator may provide internation and data to, and may consult with, the implementing agency on the determination. Thereafter, the implementing agency will provide a final determination to the owner or operator.

(3) If the final detentionation requires. a third-party and to the owner or operator shall comply with the soquizements of § 68.80, paration1 to the schedule in palagraph (b) of this 9000104

(4) Appeals. The owner or operator. may appeal a final determination made hy an implomenting agency under prosgraph (g)(2) of Bris excitors within

30 days of receipt of the final determination. The appeal shall be made to the RPA Regional Administrator, or for determinations made by other (inplamenting agencies). the administrator or director of such implementing opency. The appeal shall contribute plear aincidentisse statement of the Issues, facts in the case, and any pelevant additional information, in coversing the appeal, the implementing agency may request additional information from the owner or operator. The implementing agency will provide e writton, final decision on the appeal. to the owner or aperator

(b) Schedule for conducting a thirdporty audit. The midit and audit report shall be completed as follows, unless a different timestome is specified by the

implementing agency
(1) For third-party audits required pursuant to paragraph (f)(1) of this section, within 12 months of the release:

- (2) For third-party module required pursuant to paragraph (f)(2) of this section, within 12 months of the date of the final determination pursuant to paragraph (g)(3) of this section. However, if the final determination is spheafed pursuant to paragraph (g)(4) of this section of the date of the final decision on the appendix.
- 15. Section 60.80 is added to subpart It to read as follows:

# \$58.80 Theref-party auchie.

(a) Applicability. The owner or operator shall engage a third-party to randuct an midd that evaluates compliance with the provisions of this subpart to ecoordance with the requirements of this section when effectiveness of § 88.79(f) is met.

(b) Third-party auditors and auditing teams. The owner or operator shall either.

- (1) Bagage a third party auditor meeting all of the competency and todependence crimita in pangraph [c] of this section: or
- (2) Assemble on auditing toam, led by a third-party miditor meeting all of the composency and independence miteria. In peregraph to, of this section. The team may include:
- (i) Other employees of the Unit-Party auditor firm meeting the Independence criteria of paragraph (c)(2) of this section; and
- (ii) Driver personnel not employed by the third-party auditor from including facility personnel
- (c) Third-party auditor qualifications. The awnor or operator shall determine and document that the third-party auditor(s) meet the following

noinpateurly and independence requirements:

(I) Computency requirements. The third-party auditor(s) shall be:

 (i) Knowledgeable with the requirements of this part;

- (ii) Experienced with the stationary source type and processes being audited and applicable recognized and generally accepted good engineering practices; and
- (iii) Trained or certified in properauditing techniques.

(2) Independence requirements. The third-party auditoris; shall:

 f) Act impartially when performing all activities under this section.

- (ii) Receive no financial benetit from the outcome of the andst, apart from payment for auditing services. For purposes of this payagraph, retired employees who otherwise eatlary the third-party auditor independence orieria in this section may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed ac managed retirement aud/or health plans;
- (iii) Not have conducted past research, development, design, construction services, as consulting for the owner or operator within the last two years. For purposes of this requirerzons, consulting dress not include performing or participating in third-party and its pursuant to § \$8.58 nr. § 68.80. An audit firm with personnel who, before working for the auditor, conducted research, development, প্রস্তুরা, congruction, or consulting services for the owner or operator within the just two years as an employed or expression may meet the requirements. of this subsection by ensuring such personnel do not participate in the audit, so monege or edvise the audit ream concerning the audit.

(iv) Not provide other business of consulting services to the owner or operator, including advice or assistance to implement the findings or recommendations in an audit report, for a period of at least two years following submission of the fine, audit report:

(v) Busine that of thind-party personne involved in the endit sign and three a conflict of interest statement documenting that they race the independence disterts of this paragraph: and

(vi) Ensure that all short-party procedured involved in the audit do not accept future employment with the ewner or operator of the stationary source lost period of at least two years following submissions of the final audit report. For purposes of this requirement, omployment does not include

performing or participating in thirdperty endits pursuant to § 68.59 or § 68.80.

(3) The auditor shall have written policies and procedures to ensure that all personnel comply with the competency and independence expanements of this section.

(d) Third-party auditor responsibilities. The owner or operator shall ensure that the third-party enditor-

 Manages the audit and participates is midit initiation, design taipletishtation, and reporting;

(2) Determines appropriate roles and responsibilities for the audit (sam members based on the qualifications of each team member;

(3) Prepares the audit report and where there is a team, documents the fell audit ream's views in the find audit report;

(4) Contlines the finel audit report and its contents as macking the requirements of this section; and

 (5) Provides a copy of the audit report to the owner or operator.

(a) Andil report. The aedit reports
shall:

 Identify all persons participating on the sudit team, including names titles, or players and/or affiliations, and summaries of qualifications. For thirdparty auditors, include information demonstrating that the competency requirements in pangraph [c)[1] of this section are med.

(2) Describe at incorporate by reference the politics and procedures required under paragraph (c)(3) of this section:

(3) Document the auditor's evaluation, for each covered process, of the owner or operator's compliance with the growinions of this subpact to determine whether the procedures and processes developed by the owner or operator under this rule are salogante and being followed;

(4) Document the findings of the sudit, tablading any identified compliance of performance deficiencies;

(5) Summerize any significant revisions (if any) between draft and final versions of the report; and

(ii) Include the following contification, signed and dated by the third-party auditoes or third-party audit team member leading the audit:

I certify that this KAO compliance audit agont was prepared under my dissertion or supervision in accordance with a system easily and to assume that qualified personned properly gather and evaluate the information upon which the audit is based. Therefore cornly that the number was conducted and this report was grephered pursuant to the requirements of subject 0 of 40 GFR part 68 and all other applicable auditing.

competency, undependency, imperiodity, and conflict of interest standards and protocols. Based on my personal knowledge and experience, and laquity of personal introduced in the ardit the information submitted herein is true, accurate, and complete.

(ii) Third-party and if findings—(1) Findings response report. As soon as passible, but no later then 90 days after receiving the final audit report, the owner or operator shall determine an appropriate response to each of the limitings in the sudit report, and develop a findings response report that includes

 (i) A copy of the fines and it report;
 (ii) An appropriate response to each of the oud it report findings;

(iii) A schoolds for promptly addressing deficiencies, and

(iv) A certification, signed and dated by a senior corporate officer, or an official in an equivalent position, of the owner or operator of the stationary abouts, stating:

l cortify under possibly of law that I have ne beal to revolved of your-build a begages audal team to conduct a third-party sudit in necordance with the coquicoments of 60 GPR हरू 90 and that the estached KMP compliance. and the produced was received, reviewed, and responded to modes ray daractica at supervision by qualified ഉഗ്യക്താന്മി. I huthor contry that appropriate responses to the findings these seen identified and deficiencies were corrected, or are being comenial, consistent with the requirements of support DinG40 CFR page 68, as dominimized herein. Baser on my personal knowledge and expensions, or inquiry of noqer edi gici suluva ui bevlovici larmanco Eindengs and determining appropriate responses to the Eindings, the information submitted herein is true, accurate and complete Tent twact that there are significant penulties for making false material statements, representations, on cartifications. including the possibility of lines and tmarisonment for knowing violations

(2) Schedule implementation. The owner or operator shall implement the schedule to address deficiencies identified in the eadst findings response report in pangraph [J(t](iii) of this sortion and document the action taken to address each deficiency, along with the date completed.

(3) Salimassion to Board of Directors. The owner or operator shall immediately provide a copy of each document required under paragraphs (fi(s) and (2) of this section, when completed, to the owner or operator's audit committee of the Board of Directors, or other composable

connuittee or budividual, if applicable.

(g) Becardkeeping. The owner or operator shall tetain at the stationary source the two most meant final third-party audit reports, telered findings response reports.

actions taken to address deficiencies, and reloted records

 16 Anaend § 58 81 by revising paragraphs (a), (d) introductory text, (d)(1), (d)(0) through (5), and adding paragraphs (d)(6) through (8) to read as follows:

#### §68.81 Incident investigation.

(a) The owner or operator shall investigate each incident that:

 Resulted in a catastrophic release (including when the affected process is deconnoissioned or destroyed following, or as the result of, an incident); or

(2) Could reasonably have resulted in a catestrophic release (i.e., was a near miss).

Idl A report shall be prepared at the immiduation of the investigation. The report shall be completed within 12 months of the incident, unless the implementing agency approves, in writing, an extension of time. The report shall include:

 (1) Date, time, and location of incident;

 (a) A description of the incident, in channelegical order, providing all relevant facts;

(4) The name and amount of the regulated substance involved in the release (e.g., fite, explasion, text) gas lose of containment) or neat miss and the duration of the event:

(5) The consequences, if any (4 the incident including, but not limited to injuries, latalities, the number of people evacuated, the number of people sheltered in place, and the impact on the environment;

(C) Emergency response actions taken; (?) The factors that contributed to the incident including the initiating event, during an indirect contributing factors, and nort rayess. Root rayes shall be determined by conducting an analysis for each incident using a recognized method; and

(R) Any recommondations resulting from the investigation and a schedule tot addressing them.

■ 17. Revise § 68 90 to read as follows.

# ⊈68.90 Applicability.

(a) Responding stationary source. Except as provided in peregiaph (b) of this section, the owner or operator of a stationary source with Program 2 and Program 3 processes shall comply with the requirements of §4 68.93, 68.95, and 68.95.

(b) Non-responding stationary source.
 The owner or operator of a stationary.

rounce whose employees will not respond to accidental releases of regulated substances need not comply with \$68.95 of this part provided that:

(1) For stationary sources with any regulated loxic substance held in a precess above the threshold quantity. The stationary source is included in the community amergency response plan developed under 42 U.S.C. 17003;

(2) For stationary sources with only regulated flommoble substances held in a process above the threshold quantity, the owner or operator has coordinated response actions with the local fire department;

(3) Appropriete mediantsmalare in place to notify entergency responders when there is a need for a response;

14) The environ or operator performs the annual emergency response coordination registers required made: § 68.93, and

(5) The owner or operator performs the annual nertification exercises regulated under § 68.9644.

■ 10. Section 60.90 is added to subpart Dito send as follows:

# §68,93 Finergency response coordination activities.

The invener or operator of a stationary source shall coordinate response needs with local emergency planning and response organizations to determine how the stationary source is addressed in the community emergency response plan and to ensure that local response organizations are aware of the regulated substances at the stationary source, their quantities, the risks presented by covered processes, and the resources and capabilities at the stationary source to respond to un accidental release of a resoluted substance.

regulated substance.
(a) Coordination shall occur at least actually and more frequently if necessary, to address changes: At the stationary source; in the stationary source's emergency response and/or emergency artion plan; and/or in the

contractity emergency response plan obucin: Kada haatsaribhook) (d) providing to the local entergency planning and response organizations: The stationary source's emergency response plan il une exists; emergency action plan; updated emergency contact information; and any other information that limal emergency planning and response organizations identify as relevant to local emorgency response planning. For responding stationary saurces, coordination shall also include consulting with local emergency response officials to establish appropriate schadules and plans for field and rabletop exercises required under \$ 59.96(b). The owner or operator

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shall request an opportunity to meet with the local emergency planning committee (or equivalent) are for leval line department as appropriate to raview and discuss these materials.

(c) The owner or operator shall document coordinates with local authorities, including. The neares of individuals involved and their control information (phone number, emails address, and organizational affiliations); dates of exordination activities; and nature of coordination activities.

- 19. Acres £ 5 58.95 by:
- a. Ravising persons plc(e)(\*)(\*);
- h. Adding a sentence to the end of paragraph (n)(4); and
- c. Kavising paragraph (c).

The revisions and addition read as follows:

# 68.95 Emergency response program.

laj ' ' '

- (i) Pyonedures for informing the gubble and the appropriate Pederal, state, and local amagency response agencies about applicated releases.
- [4] \* \* \* \* The owner or operator shall review and update the plan as appropriate based on changes at the stationary source or new information obtained from coordination activities, energency response exercises, ancident investigations, or other available suformation, and ensure that employes are informed of the changes.
- (c) The emergently response plan developed under paragraph (a)(1) of this section shall be coordinated with the community emergency response plan developed under 42 U.S.C. 1100A. Upon request of the LEPC or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information recessary for developing and implementing the community emergency response plan.
- 20. Section 68.95 is added to subpart. Bito read as follows

# §68.96 Emergency response exercises.

\* (a) Notification exercises. At least sace each calendar year, the owner ar operator of a stationary source with any Program 2 or Program 3 precess shull conduct an exercise of the stationary anaron's emergency response optification mechanisms required under § 68.90(a!(2) or § 68.95(a)(1)(i) as appropriate. Owners or operators of responding stationary sources may perform the notification exercise as part of the tabletop and field exercises.

required in paregraph (b) of this scotton. The owner operator shall maintain a written record of each notification exercise conducted over the last five pages.

(b) Етегувтау гогрооло ахегоіго program. The owner or operator of a stationary source subject to the requirements of § 68.95 shall develop end tapplement on oxoreres program for ets achergency response program. encluding the plan regained under 資格思知(a)j1). locentises skall involve famility emergency response personnel and, as appropriate lemergency response. contractors. When planning emergency response field and tabletop exercises, the owner or operator shall coordinate. with limit public emergency response. officials and invite them to participate in the exercise. The emergency response: exercise progrem shall include:

[1] Emergency response field exercises. The owner or operator shall conduct field exercises involving the simulated accidental release of a regulated substance (i.e., textic substance release or release of a regulated flammable substance involving a fire and/or explosion).

C) Prequency. As part of coordination with the utenergously response officials required by § 60.93, the owner or operator shall consolt with these officials as appropriate frequency for field exercises, but at a minimum, shall conduct a field-exercise at least once even ten years.

at lenst ence every ten years. (a) Scope: Fletc exercises shall include: Tests of procedures to notify the public and the appropriate Faderal. state, and local eatergency response seselet latribbicca de Jacobs seignege rol sourceant but earthworth for atera emergency response actions including evacuations and medical treatment; tasts ol exemmunications systems; mobiliszation of facility emergency гсеропяе регестлей, инфидіту cultractors : as appropriate; coordination with local emergency respondence ediergeody response equipment deployment; and any other action identified in the emergency response. program, es appropriate

[2] Tablets p exercises. The owner or apprator shall conduct a tabletop exercise involving the simulated accidental release of a regulated substance.

(i) Frequency. As part of condination with focal emergency response officials required by § 68.93. The owner or operator shall consult with these officials to establish an expropriate frequency for tabletop exercises, but at a minimum, shall conduct a field exercise at least once every three years.

- (i.) Scope. The exercisa shall include discussions of: Procedures to notify the public and the appropriate Federal, state, and local emergency response agenties: procedures and measures for margandy response including evocustions and facility entengency response personnal analysis confractors and their responsibilities; coordination with local emergency responders; pracedures for emergency response equipment deployment; and any other action identified in the emergency response plan, as appropriate.
- (3) Monimentation. The owners' operator shall prepare an evaluation separt within 50 days of each exercise. The report shall include: A description of the exercise somaries names and organizations of each participant; an evaluation of the exercise somaries results including lessons learned; recommendations for improvement or revisions to the emergency response exercise progrem and emergency response jungam, and a schedule to promptly address and resolve recommendations.
- (c) Alternative means of meeting exercise requirements. The owner or operator may satisfy the requirement to conduct notification, field and/or tabletop exercises through
- (2) Exemises conducted to meet other Federal, state or local exercise requirements, provided the exercise meets the requirements of paragraphs (a) and/or (b) of this section, as appropriate
- (2) Response to an antidental release, provided the response includes the settions indicated in paragraphs (a) and/or (b) of this sention, as appropriate. When used to meet field and/or tabletop exercise requirements, the owner or operator shall prepare an effectation report comparable to the exercise avaluation report required in paragraph (b)(a) of this section, within 90 days of the incident.
- 21. Amend § 68.400 by.
- a. In Table 1. "List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention".
   c.der second column entitled "CAS No.", removing the number "107-18 61" adding "107-10-10" in its plane; and
- b. Revising Table 4.1 List of Regulated Flammable Substances and Threshold Quantities for Accidental Release Presenting.

The revisions read as follows:

# §68.830 List of substances,

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# TABLE 4 TO § 68,130 - LIST OF HEGULA) ED FLAMMARJE SUBSTANCES 1 AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—63 Substances]

CAS No.	Chemissi name	Threshold quantity (lbs)	Basis for listing
IT-29-7	Ethy other [Ethane 1,11-exybis-]	10,000	9
00–29-7 74-92 8	Mediane	19,000	۲
74-84-C . ,	Ethyse	10,933	ļ.
74-85-1	Ethytena (Elhane)	10,035	!
74 85 2	Acetylane [Elfryne]	10,000	!
74-89-5	Methylamine [Mathanamino]	10,000 10,000	1
74-99-8	Propose   Propyre	10,000	li
74·99-/	Fility! chloride   Elhane   Chlora-)	10.000	i
75-01-4	Virial rido(Ma (F <b>in</b> ena, Chino)	10,003	ė. I
75-02-5	Vinit Autorice (Etherie, Augro-) Ethylamine (Etherien)	10,000	t
75-04-7	Ethyamne (Ethansmine)	10,070	ı
	Agertal/denyde	10,000	Ä
75-09-1	Apria denyde Eihy merceptan (Ethanelhol)	10,000	9
	Lypnopropane	10,006 10,000	7
75–29–5	Isolutiano (Propere, 2-methyl)	10,000	0
75–31–0	leon-no Jemine 12-Propanaming	10.000	น์
75–35–4	Vinviidana chlunise [Eirjene, 1,1-0ishloro-]	10,000	Ď,
7 <del>5</del> . 37-6	· Diffusions name (Ethane, 5, > diffuoro-)	10,000	f
75-38-7	: Vinglidene 1concia (Elhane, 1,1-diffuctor)	10,000	į
75-50-3	Inmethylanure (Melliensmins, N. Nidmethyli)	10,000	<u>'</u>
75-76-3	Tetramethytestane (Stane, tetratryt-)	10,000 10,000	9
78 79 4 78-79-5	Isopertano   Bulano, 2-mothyl-)	10.000	n n
79-38-9	Triffuccioning cetrolena (Ethene, chlominillocro-1	10,000	ř
106-97-9		10,900	r
106 98 9	°-Вілеле	10,000	ſ
100-99-0		10,000	ţ
107-00-6	Eliyl acelytere (i-Outyre)	19,000	ŗ
107-IP 7	Viny mellys ether [Fihene, melhoxy-]	10,000 10,000	ļ.
107–25–5 107–31–3	Medinal formula (Formic Add, mathy) ester	10,600	,
109 -56-0	Per / Arek	10,500	ă
109-87-1		10,000	õ
109 97-2	1-Peniene	10.000	9
109-95-6	Ediyl pitrile [Nectos açıd, Altyl Aslar]	10,000	!
115-47-1	Prosverse [1-Propere]	19,000 10,000	,
115-10 6	k-Wallytropere (1-1/opene 2-metryl-)	19,600	i
116-14-3	Yalmaunczejnylene (Etherre, telratuoro-)	10,000	i
124 AD 3	Dimothylamina (Machanamian, N-methyl-)	10,000	i
460 48 6	: Description (Filed this let ifflet	10,000	ſ
483-19-0	Propadese [12-Propadene]	10,000	1
463-51-1	Cairon oxiguinde (Carour dude sulide (CUS)	16,000   10,600	1
463-82-1	Propadese [1.2-Propederie] Callins oxysulfide [Cartiur code sulfide (COS)] 2.2-Binielhylpropana [Propana, 2.2-dimethyl-] 3.2-Pantiurene	10,000	ŕ
55/-98-2	2-Chloropropylene [5-Picpene, 2-chkxi0-]	10,000	9
563-45-1	S. Malhur 1 Fernan	10,000	1
569-46-2	9-Mathy-1-buterie	10,800	9.
290-10-1	S-Butano dis	16,500	1
590-21-6		10,000	9
598-73-2	Brompinikurethytene (Ethere, brononflocro-j	19,500   16,000	7
627-20 3	2-Penlane (Z)	10,000	
644-14-8	5-Parlone 'F):	10,000	ā
699-97-4	Vinyt asetytana (1-Duter-3-yna) Hydrogen	10,000	f
1333-74-0	Hydronen	10,000 1	ţ
4109-96-0	Diction College Strate Strategy (College Strategy)	10,000 ±	Ţ
7791-21-1	Chonne montuigle [Chiorne Assie]	10,600   10,660	
7903-62-5	Officerine monovide [Chap the nexte] Silano Frightmostlane (Silane, Wichlero-)	10,600	is .
25167-67-3	Outere	10,000	F

<sup>1.</sup>A flammable substance when (sect as 4 Aps or hald for sala as a high at a relatifiatility is excluded from all provisions of this part (see §89.126).

Note: Basis for Listing
A Mandaled for tisting by Congress
1-Atammable gas.
2 Volatile Bannoglife South.

paragraphs [h](21) and (22) to read as follows:

§ 68.160 Registration. (b) \* \* \* \*

(21) Mothed of communication and location of the notification that chemical hazard information is

<sup>■ 22.</sup> Amend § 68.150 by adding.

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avaliable to the public, pursuant to § 60.210|c|: and

(22) Whether a public electing has been held following an RMP reportable: accident, pursuant to \$68,210(e).

■ 23. Amend § 84.170 by revising paragraphs (i) and (f) to read as follows:

# § 68.179 Prevention program/Program 2.

(if The date of the most recent compliance again, the expected data of completion of any charges resulting from the compliance audit, and identify whether the most recent compliance audit was o third-party audit, pursuant to 95 60.58 and 66.59.

(j) The completion dete of the locat recent incident investigation and the expected date of cerupletion of any changes resulting from the investigation. . . . .

■ 24. Amend § tå.175 bv.

- a. Kevisingaho untroductory toxt of paragraph (e), and paragraphs (ell1), (5). and (6):
- b. Adding paragraph (a)(7); and □ c. Revising paragraphs (k) and (l).

The revisions and addition read as

# §68.175 Prevention program/Program 3.

[4] The most recent process hazard. analysis (PHA) to PHA update and revalidation information, pursuant to &GB.87, including:

The date of completion of the most recent PHA or update and the technique used:

- (6) Monitoring and detection systems ām niste:
- (6) Changes since the law PHA; and (2) Inherently eafer technology or

ed) sociá batasarelynti rerussam ragizab Jast PMA, it any, and the technology categozy (subsolution) minimization. gimplification and/or moderation).

- .

(k) The date of the most recent completed audit, the expected date of completion of any changes resulting from the compliance audit, and identify whether the mean reach with radiative audit was a third-party audit, porseant (p. §§ 68.79 and 60.00.

(i) The completion date of the mest recent their feat trivestigation and the expected date of completion of any changes resulting from the investigation.

■ 25. Revise § 68.180 to read as follows:

#### §88.180 Emergency response program: and exercises.

(a) The owner or operator shall provide in the BMP:

- (1) Name, organizational affiliation, places number, and sinuit address of local emergency planning and response organizations with which the stationery solitos last coordinated amargency. response efforts, porsusuit to § 88.10(f)(3) or § 68.93;
- (2) The date of the most recent coordination with the local emergency response organizations, pursuant to \$68,93 and

(3) A list of Federal or state. emotymay plan requirements to which the stutturiary appropriational

(b) The owner or oporator shall identity in the RMF whether the facility is a responding stationary source or a non-responding stationary source. pursubed to \$68.50.

For non-responding stationary sources, the award or operator shall irlentaty:

 For stationary sources with any regulated tracic substance hald in a process above the threshold quantity. whether the stationary smirror is included in the community emergency. espansa plan developad under 42 U.S.C. 11803, pursuant to § 69-90(b)(1),

(ii) For stationary sources with only regulated flammaltle substances held in a process above the threshold quantity. the date of the most recent coordination with the local fire department, pursuant (p § 68.90(h)[2];

(iii) What mechanisms are in place to notify the public and emergency reapondors whon those as a need for actiongency response: and i

(ivi The date of the most recent notification exercise, as required in § (4),90(4).

(2) For responding stationary sources, the owner or operator shall adentify.

(v) The data of the most recent review and opdate of the emergency response plan, pursuant to \$38.95(n)(4);

(ii) The date of the most recent notification exercise, as required in § թн.ցոլել,

(Sii) The date of the most recent field. exercise, es reguised (n. § 68 96fb)(1):

(iv) The date of the most recent tabletop exercise, as required in: § Bu.96(b)(2).

■ 26. Amend § 68.190 by adding a ot (a) algergeraq to bare edt to echetnes inad as follows:

# 568.190 Updasas.

(c) \* \* \* Prior to de registration the owner or operator shall meet applicable. roporting and incident investigation requirements in economics with 65 68.42, 68.60. and/or 68.81.

■ 37. Revise § 68.200 to reso as follows.

# §68.200 Recordkeeping.

The owner or operator shall maintain records supporting the implementation. al this par! at the stationary source for live years, unless otherwise provided in antipart D of this part.

■ ZB. Rievise § 68.210 to read as follows:

# 568.210 Availability of information to the

(s) HMP availability. The RMP required under subpart G of this part. whalf by available to the public under 42 U.S.C. 7414(c) and 40 CFR part 1400.

(b) Chemical hazard information. The owner or oparator of a stationary source. shall provide, upon request by any manifer of the guidic, illa following clamical listard information for all regulated processes, as applicable:

(1) Regulated substances information. ni blad sephatadus bataloger lo Senuavi

s process: [2] Safety data sheets (SDS), SDSg for all regulated substances located at the facility.

(3) Accadent history information. Provide the five-year socident history information required to be reported nuider § 66.42;

(4) Emergency response program. The following summary information: concerning the stationary source's compliance with § 68.10(f)(3) or the excentionally response provisions of subpart E:

(i) Whether the stationary source is a responding stationary sounts or a nonresponding stationary sounce;

(ii) Name and plume number of local emergency response organizations with which the owner or operator last coordinated omergency response efforts, pursuant to \$68.160; and

(iii) For stalionary sources subject to 980.98, procedures for informing the public and local emergency response agencies about accidental releases,

(5) Exercises, A list of scheduled. exerciaea required របស់er §៩៦.96; សាជ (6) LEPC contact information, Include

LESC name, phone number, and webaddress as aveilable

(c) Netification of availability of information. The awarer or sperimer shall provide ongoing notification on a company Web stie, social aiedea. platforms, or through other publicly accessible means that:

Of information specified in paragraph. (b) of this section is available to the public upon request. The natification (Isdă

Specify the information elements, identified in paragraph (b) of this section, that can be requested, and

(iii) Provide instructions for how to regrest the information (e.g. email.)

Document #1701385

ഗവിലുള്ള address, and/യ telephone or Web site request);

- (2) Identify where to access information on community preparationses, it available, including shelter in place and evacuation procedures
- (d) Timeframe to provide requested inflamation. The atomer or operator shall provide the requested information under paragraph [b] of this section within 45 days of secretaling a request from any member of the public.
- (e) Public meetings. The owner or aperator of a stationary source shall hold a public meeting to provide information required under § 68.42 as
- well as other relevant chemical hazard information such as that described in paragraph (h) of this section, no later than 90 days after any accident subject to reporting under § 88.42.
- if) (Joss/fied information classified by the Department of Information classified by the Department of Information of other Federal agencies or controlled by applicable laws, regulations, or executive orders concerning the related of classified information.
- (g) CBI. An owner or operator asserting CBI for information required under this section shall provide a sanitized varsion to the public.

Assertion of claims of CBI and substantization of CBI claims shall be in the same manner as required in §§ 68.151 and 68.152 for information contained to the RMP required under subpart G of this part, As provided under § 68.151(b)(3), an owner or operator of a stationary source may not claim tive-year audient history information as CBI. As provided in § 68.151(c)(3), an owner or operator of a stationary source asserting than a chemical name is CBI shall provide a generic calegory or class name as a substante.

IFR Doc. 2006-11526 Filed 1-12-17, 8:35 am; BEUHR 0006 656-6-P USCA Case #17-1155 Document #1701385 Filed: 10/25/2017 Page 103 of 122

# LEGISLATIVE HISTORY

8339

# Calendar No. 427

# CLEAN AIR ACT AMENDMENTS OF 1989

# REPORT

OF THE

# COMMITTEE ON . ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

together with
ADDITIONAL AND MINORITY VIEWS

то ассемеану

8. 1680



December 20, 1983.—Ordered to be proceed

0.4. ООУЕЯММЕНТ РЕПИТИКИ ОРРИСЕ Ф'ЯТИНОТТОН : 1968

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101-228

Calendar No. 427

101st Congress
2st Session SENATE

# CLEAN AIR ACT AMENDMENTS OF 1989

Distributed to be printed.

Mr. Busnucz, from the Committee on Environment and Public Works, submitted the following

#### REPORT

together with

## ADDITIONAL AND MINORITY VIEWS

(To accompany S 1630)

The Committee on Buvironment and Public Works, to which was referred the bill (S. 1930) to amond the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality significant, and for other purposes having considered the same, reports favorably thereon with an amendment and recommend that the bill as smended do page.

## GENERAL STATEMENT

The Clean Air Act is the first modern environmental law to be enacted. It was first agened into law by President Johnson in 1965, replacing previous Federal nir pollution legislation. In 1965 hearings before the Special Subcommittee on Air and Water Pollution, the Assistant Secretary of the Department of Health, Education, and Welfare testified:

[S]erious air pollution problems arise; from the ever-increasing use of motor vehicles, [and] our rising demands for the energy derived from horning of sulfur-hearing fuels. The nations) importance of resolving these problems is beyond dispute. They are among the most significant factors in the growing and wavestring sir pollution problems currently faced by thousands of American communities.

All the Control of Control of Particles of the Control of Contro

the Board are not subject to the direction of officers in any other

deportment or against.

The Board is to report annually on its activities to the President and to the Congress. The report shall include:

(1) a review of the accident investigations conducted during

the pravious focul year;
(2) a summary of the recommendations including proposed

rules or orders made by the Board as the result of such investigations,

(S) an accounting of the actions taken by the Administrator of the Environmental Protection Agency in response to recom-

mendations of the Board during the previous fiscal year;
(4) a list of the recommendations by the Board which have not been acted upon by the Administrator,
(5) recommendations for legislation or regulatory changes

which would prevent or mitigate accidents; and

(6) a description of the future research progress of the Board. Subsection (e) includes an annual authorization of \$12 million for each of the fiscal years 1990 through 1994 to carry out the duties assigned to the Board.

Accelerate prevention.—Subsection (f) of the new section 129 provides the Administrator with authority to promulgate regulations to prevent, detect and correct socidental releases from all devices and systems at incidities which manufacture, store or process expensions of the contract tremely hazardous substances including those listed pursuant to subsection (c) in more than threshold amounts. The Administrator may list substances with respect to which the regulations will apply at the time requirements are promulgated (if the substances have not been listed previously under subsection (c)) or may promulgate general requirements applicable to facilities handling substances not listed under subsection (c)

The subharity provided here is to be broadly construed. It is in-tended to allow the development and implementation of require-ments that will prevent the sudden, accidental release of extremely hazardous substances and to mitigate the hazard presented should a release notur. Authority to prevent routine process releases (including small leaks and dripe or normal process vental of air pollutants which may cause chronic adverse health effects or scate effects which are not life threatening is provided under section 112.

The requirements issued under this subsection shall apply to any

and all devices and systems used to produce, process, bundle or store extremely hazardous substances. Examples of the type of requirements that might be promutested are listed and include monitoring, record-locating, reporting, training, vapor recovery, according containment and other design, equipment, work practice and content of the process. And operational requirements.

The nuthority to issue accident prevention requirements is not linked to the listing of substances under subscribe (c). The only browsions which are mandatory upon the listing of a substance are the hazard assessment required by misorction (d), the leak detection requirements established by subsection (g) and the reporting requirements to be included in any State program approved under section 112. Considering the biscory of section 112, it is apparent that mandating comprehensive regulations applicable to all facili-

ties handling a substance shortly after it is listed serves only to dis-

courage the listing of the substance.
It is to be noted that the Chemical Safety and Hazned Investigation Board may recommend to the Adnihilastrator various requiremonts to be primulgated under authority of this section. The principal function of the Eward is to establish a foundation for regulatory action that will trigger rule-making on an appropriate sched. ale without prescribing the exact content and dendlines for various

rules in the statuary language The legislation might have directed the Administrator to issue relesse prevention, detection and correction regulations for specific industries or extensely hazardous substances by a data certain as has been done frequently in other environmental statutes. That is the "prescriptive" path and it has benefits when an environmental problem is well understood and there is consensus on the measures which should be applied to achieve a solution. Regulatory deadlines allow the Congress to establish priorities among the many composing demands on the Agency's resources and shield Agency actions from political pressures which may be brought to bear on the regu-latory agends. Furthermore, the deadlines allow citizens to partici-page in "oversight" of the process by providing cause for a citizen

suit to compel action when there has been a failure to perform a

non-discretionary duty.

In this instance, however, a different methodology has been chosen to assure that an adequate and timely regulatory response is made to a problem which has been identified as a high priority. The Board is designed as entitudependent agency with special expertise in the investigation and prevention of chemical eccidents is recommendations require a formal response from the Administrator, and aithough the Administrator may decline to issue a recconnended requirement for good cause, it is expected that in most instances the Board's recommendations will be implemented in a 'timely way. In an orea of great complexity such as is addressed here, the Committee intends that this institutional mechanism will overcome the regulatory incrtis which so frequently plagues on Agency with too many assignments and too few resources, and does so without the inflexibility associated with detailed statutory prescriptions, deadlines and hammers

The interim report by the Environmental Protection Agency of titled Review of Emergency Systems which was required by section 305(5) of the Emergency Planning and Community Right-to-Know Act of 1986 and was published in May of 1937 mentions four cate gories of technologies or techniques that give preliminary defini-

tion to the prevention authority provided here:

 Hazerd evaluation, that is, quantitative and qualitytive techniques for determining what series of events could result in an accidental release:

(2) Fre release prevention, that is, intrinsic and catricsic systems to reduce the probability that the primary containment of a chemical in a process line will be breached (often called "less of containment");

(3) Pre-release protection, that is, control techniques such as flares, scrubbars, or holding pands to contain, dethat is, control techniques

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stroy or reduce the quantity of the substance before it is subject to release; and

(4) Pratirelense mitigation, that is, measures that can be taken after a release to the anythingent has occurred to limit the spread of the released chemical and minimize dimense to public health and the sevironment.

Hazard evaluation is discussed above in the context of hazard asseggments which are required for all facilities producing, processing, handling or storing extremely hazaronus substances listed pursunnt to subsection (c) in more than threshold amounts.

Pre-release presention systems are intended to assure that pri-mary containment of a chemical process will not be breached. Premary containment of a chemical process with not be breached. Prerelease systems include those designed into a process (called "inreinsic systems" by EPA) to control the flow, pressure, temperature
and concentration of a process. They may specify fabrication and
other design standards for equipment including pipes, vessels,
velves, etc. They may also include redundancy and back-up systems. Prevention systems may also be required outside of the process (called "carbinate systems" by EPA) and as a retrofit to existing
systems and may include modifications to equipment up process presecretors (reddning substitution of less bacardous subsupposes). Of remeters (melduing substitution of less hazardous substances). Of conves, management and operating procedures play an important role to preventing arridental releases through Operator training, the development of emergency procedures and maintenance and

safety reviewe.

Providence protection systems are intended to contain, destroy or reduce the quantity of extremely because substances before they move off-sile. Pre-release prolection technologies include flares, accubbers, absorbers, double walled construction of process and stringers, specifies, double walled empirication of process and storage vessels and other types of secondary containment. They are designed to destroy the heaverdone substance through cambustion or chemical neutralization or contain the substance until remedial action can be taken. Back-up systems of this type offer important safeguards for some accidental releases, but as the events in Shopal demonstrated, can be overwhelmed by large releases. In response to the Bhopal tragedy, effective prevention for methyl iscorpator releases has been provided at one site by medical contents in the production process which have greatly reduced the quentity of the production process which have greatly reduced the quantity of the chemical held at any point during the series of reactions issel-ing to the final product. Similarly, provention technologies are to be generally preferred to protection technologies where prevention eliminates the possibility of a serious evens.

Post-release miligation measures are used after loss of containment has occurred to reduce the hazard before the substance moves offsite. Truly include dikes and become and methods to cover free liquids and the use of form and other agencs to prevent fire,

explosion, or volatilization of free liquids.

The interim report required by section 305(b) of title ill of SARA (the Emergency Planning and Community Right-to-Know Act of 1986) epophanized technologies to be used in accident prevention and mitigation. It also described the process KPA would use in surveying the chemical industry to determine the availability and effectiveness of such technologies. EPA's final report on this survey

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effort, (also entitled) Review of Emergency Systems, issued in June of 1988 indicated that technological "times" to prevent chemical ancidents such as those described above may not be widely available. Rather, the problem of eccidence) releases must be addressed in facality-specific, management programs which integrate measures in a number of areas (documentation, training, maintenance, layestigations and audits, as well as, technological systems for release prevention).

Overall, the section 305(b) review inchested that there is no single method or cochnology that works best in every situation. In each area considered in this review, the deter-mination of what constitutes a "state-of-the-art" technology for a particular facility depends on the Individual circurretoness of the facility—its location and leyout, its process, the chamicals issualed, and the hazards associated with the specific chemicals and processes . . .

Recognizing the elements of truth in this sustement, it is still possible to identify generic management massures or eschology standards which can be employed to reduce the like-shoot of obemical accidents and mitigate the effects should they occur. A review of the literature and State programs to prevent accidents has indicated that each of the following eleven program elements may be appropriate in accident prevention efforts and should be considered by the Administrator when satablishing requirements for incitities handling extremely hazardous substances under the authority of this section

Honord Evaluation —This element was discussed at length above as housed assessments are to be proposed by every facility handling excremely hazardous substances listed under subsection (c) in more than threshold amounts, in the final report untitled Review of Emergency Systems EPA concluded:

The facility questionnaire responses indicate that ongoing afforts to inform chemical facilities about bazard evaluntion techniques need to be expanded. Although aimost all of the respondents stated that they use heger'd explini-tion methods, only half are using the AIChE-recognized techniques. The other facilities listed less formal techniques or techniques not generally considered to be hazard

Maintain process safety documentation.—Ruch facility almuld maintain information including basis diagrams on process design. documentation on maximum and minimum operating parameters documentation on maximum and minimum operating parameters and information (physical, chemical and twicity data) on materials used as feedstocks or produced in the process. The documentation should be available to personnel with control over day-to-day operation and should be updated whenever fundamental aspects (including, but not limited to, feedstocks, catalysts, operating conditions, equipment, product specifications, by-products and wasts products, or inventories) of the process change.

Regular Safety Review of New and Existing Equipment—This program element is to include formal management procedures to review any changes made in the facility or the process. New equip-

ment should be evaluated against industry codes and standards and critical equipment abould be "state of the cart" for the particular application. In this regard, EPA's Review of Emergency Systems includes the following caution:

. . . a number of widely accepted codes, standards and recommendations provide months safety standards for equipment design, procedures and systems. It should be stressed that these standards and codes are minimizes. . . for the most part, meeting the minimum sufety requirements is not sufficient for facilities handling extremely hazardous substances.

There are, however, codes for use with respect to specific exteemely hazardous substances, for instance Sufety Requirements for the Storage and Handling of Anhydraus Ammonia developed by the American National Standards Institute, which can serve us a reliable guide to process safety for extremely hazardous substances in вотра совев.

The State of New Jersey, as part of its Toxic Catastrophe Prevention Act program, requires that newly installed, critical equipment (equipment which is part of a system to contain the release of an extremely hazardous substance) be "state-of-the-art".

New Jersey also suggests that origing equipment be reviewed annually to extremely that it employed to be consisted as new intended.

annually to assure that it continues to be operated as was intended n the original famility design and that any discrepancies (between design and operating parameters) be corrected.

The safety review element of an aoridant provention program

should also include quality assurance providious to check on the fabrication, construction and installation of new equipment before

st is put into service.

Operating provedures—A fourth element in a management program to prevent accidental releases is written operating procedures for the process or facility covering startup, shatdown and emergen-cy response in addition to normal operating conditions. These writeten procedures should include clear instructions for operator respense to deviations from normal process parameters. Operating procedures may also include safety measures and management stams such as content of access to the facility and reporting and record-keeping responsibilities.

Operator training.—Operator training is an important element of every accident prevention program. EPA's ARIP data hase indicates that 31 percent of the serious events which it investigated

were caused by operator orders.

Operator training may include orientation assistant, intensive process and safety training, training in handling extremely hazardwas substances, refresher courses and mandatory pass/fail tests for operator certification.

Preventice againstance.-EPA's ARIP data base also indicates that a program of preventive maintanance is essential to accident prevention. The ARIP update published in July of 1989 indicated

Equipment failure was the primary cause of approxi-mately 56 percent of the ARIP surveyed releases. This large percentage was not surprising because many factors

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contribute to equipment failures lack of preventive maintenance, lack of equipment inspections, improper operation of equipment, poor equipment design, and age . . . Only 4 percent [of those experiencing a reportable release] indicatof their they performed preventive maintenance on the failed equipment or system [prior to the event]

Among the measures suggested in the literature or mendeted in State programs are impersion, testing and repair of critical equipment according to a written achedule; following industry codes or design specifications for maintenance; training maintenance per-sonnel; documenting maintenance as it is completed; and replacing critical equipment before the one of its useful life.

Equipment for which preventive malutenance programs are cusential include pressure vessels and storage tanks; critical piping; paljal and vant systems and devices; emergency shuddown systems;

and critical copurols, slarms and jointlecks.

Release prevention measures.—Various release prevention sys-tens were described above in the review of EPA's interim report under section 805(b) of SARA. They include, but are not limited to:

backup, redundant and interlock systems in the process.

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(2) the substitution of less hashrous materials: (3) reduction in process severity (temperature and pressure) or complexity;
(4) smaller volumes of excremely hazardous substances in

elo**rag**e;

(5) process nomitors to detect deviations from normal operating parameters;
(6) protection systems like scrubbers and flares; and

(f) post-release mitigation measures including water curtains, liquid containment and cover systems and measures to

prevent fire and explosion.

Release detection systems.—These devices and methods will be discussed more thoroughly in the context of subsection (g) requirements below and were reviewed in detail in the EPA report Repiets of Evaregemy Systems proposed parsuant to section 30h(b) of SARA. It is important to point out that leak detection is not as effective in reducing the threat of chamical accidents as are the prevention sys-tems and measures described above. Leak detection can, in some instances, alert system operators to the presence of small amounts of extremely hazardous substances before a process upset becomes a run-away catastrophe. However, for events that develop quickly, corrective action and emergency response measures may not be implemented in time to prevent serious durings, injury or deaths.
Unlike programs to control the slow release of harmont meterials. (for instance, the underground storage tank program) detection is not a satisfactory substitute for prevention in the case of large spills and vapor releases of extremely hazardous substitutes.

Upper and accident release invertigations.—Facility owners and operators abould conduct a timely (commencing within 48, hours) investigation of each upper or accidental release which has the potential for causing substantial harm or being the precursor of such an event. The investigations should be documented in written re-

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ports including recommendations for equipment or operational changes. The investigations should be conducted by knowledgeable persons with access to process information and the results should be communicated to process operators when the investigation is

Alert systems and emergency response plans.—Tochniques to elect the public in the event of an accidental release and to implement emergency response plans have been reviewed as the result of the Emergency Planning and Community Right-to-Know Act of 1986. The requirements of that legislation are described in the introductory material to this title and technologies for alert systems are reviewed in EPA's Section 805(b) Report. The important elements are: 1) written operating procedures containing the necessary information to notify emergency response personnel at the facility and in the community, 2) advance information available to community emergency response officials to facilitate implementation of the plan; and 4) regular testing of notification equipment and the maintenance of beckup systems in the event that the primery system is demaged by the accidental release.

Program audia.—Each of the elements of the accident provention program outlined above should be audited on an annual basis by company personnel (other than those directly responsible for the process unit) or outside consultants with access to process information at the facility to assure that each element is up-to-date and to identify correction measures that are needed.

identify corrective measures that are needed.

These eleven elements have been described to indicate the range of authorities which are available to the Administrator under subsection (f). It is not intended that the Administrator be limited to these authorities or that each element be required in every case or immediately. They do reflect recommended elements for accident programs identified by several expert or regulatory courses.

Subsection (f) of the new section 129 would also authorize the Ad-

Subsection (f) of the new section 129 would also authorize the Administrator to require that the owner or operator of any facility handling an extremely interclose substance propers a risk management plan. This provision is modeled on the New Jersey Toxic Catastyuphe Prevention Act which requires the preparation of such a plan for each facility in New Jersey handling any one of the extremely hazardous substances which the State has listed. The New Jersey plans are required to include sight of the elements which were described above trafety reviews of new and existing equipment, standard operating procedures; proventive maintenance; operator training; accident investigation; hazard evaluation; emergency response planning; and annual andits). In the New Jersey program, these plans are submitted to a State agency for review and an action.

gyans, these plane are submitted to a State agency for variew and may be returned to the owner or operator for corrective action.

Under the proposed tegislation, the Administrator may require that such plans be reviewed by an Independent engineer (knowledgeable in these fields) who is not otherwise employed by the facility owner or operator. The independent engineer must certify on the plan or return it to the owner or operator with recommended changes. Corrective actions recommended by the independent engineer must be implemented by the facility owner or operator. A

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similar review provision has been included in the SPCC progress, under section S11 of the Cleun Water Act.

The clak management planting requirement may be different from other requirements imposed under this subsection in that is requires a comprehensive plan covering the whole facility (rather than any specific piece of equipment, substance or process) and is

reviewed independently with corrective action mandated.

The Administrator is to coordinate ections under this authority with actions taken by the Occupational Sefety and Health Administrution so that requirements imposed by both agencies to accom-plish the same purpose are not unduly burdensome or duplicative. This requirement for coordination in no way diminishes the Administrator's authority to not and does not imply that regular-monic under this section must be set aside or delayed where CSHA is acting with respect to the same hexard. Quite often protection technologies which are appropriate for workers on site (protection clothing, respirators, etc.) and which may be required by OSHA would not be effective to prevent death or injury among the general public residing or working near a facility.

It is not a purpose of this subsection to impose additional penalties on the owners or operators of facilities where a single event violates requirements imposed both under this section and by OSHA. In response to those events a single enforcement strategy should be developed through consultation between the two agen-

Testimony at hearings before the Committee by representatives of the chemical manufacturing industry indicated a belief that OSHA may be a more appropriate lead agency than EPA to implement some of the authorities granted in the proposed section 139. Accidental releases with the potential to cause injury and death outside the boundaries of a facility handling extremely hazardous substances would typically present an equal or greater threat to the health and safety of workers working at the facility during the event. OSHA is charged with easuring that the health and safety of workers is protected from the adverse effects of such events. And OSHA already has authority to implement requirements similar to those described here.

But it must be noted that OSHA has not chosen to set on those authorities even in light of the evidence from its own post-Bhopal study (the Chemical Special Emphasis Program) which indicated that existing OSHA regulations are not effective to preventing or miligating the threat of catastrophic chamical accidents.

A private consulting organization has disculated a proposed acrident prevention program which is prepared for consideration and premutgation by OSHA (see Organization Resource Counselors, Inc. (ORC) "Memorandum of the Vica President dated December 9, 1988"). Although there is much to command in this proposal. would not, if promulgated as written, satisfy the intent of this keyislation with respect to accident prevention. It proposes to presmpt all State and local government action in this area. The hill, by conan state and local government action in this area. The interpolation of trust, contemplates a cooperative Faderal-State program employing the strengths of each governmental level to provent actidents. The ORC proposal, by definition, declares all heaviles evaluation material to be confidential and subject to trade secret protection and is,

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thus, contrary to the purpose of the hezard assessment requirement hoposed here (and to the provising of current law which autherize local emergency planning commissions to voquest such information from facility operators). Finally, the proposed rule would impose only vague performance standards on facility owners and operators which would be essentially unenforceable with respect to

any specific element in the recommended program.

In respect to the balance of responsibility between EPA and OSMA in this area, it must also be noted that EPA has been as signed significant responsibilities in omergency planulus and the coordination of reporting and record-keeping requirements for re-leases of extremoly hazardous substances under CERCLA and SARA. As the result of these authorities, EPA has developed considerable expertees in the area of accident prevention. For instance, the substances proposed to be listed under the ORC document cited above are drawn from the list of substances prompleted by EPA under section S03(a) of SARA.

The current language of section 112 of the Clean Air Act may be read to anthorize a program to prevent the release of extremely hazardous substances to the air. Section 112 contains no language limiting the regulatory authority to the establishment of standards for routine, process releases only Section 112(a)(1) of the Clean Air Act defines a hazardous air pollutant as an air pollutant which may reasonably be anticipated to result in "an increase in mortality or an increase in acricus irreversible, or incapacitating reversi-ble, illness." On its face, this definition applies equally to an acutely dengerous pollutant which can unuse death or serious illness due to an accidental release and to a chronically dangerous pollutant which can cause death or serious illness after prolonged soutine. emissions. Thus, the bill does not create entirely novel authorities for EPA; nor does it move the Agency into a field fully and offectively occupied by OSHA standards.

Subsection (f) does not authorize the Administrator to promolgate requirements which would be applicable to the accidental release of radionuclides from a facility which is licensed by the Na-

clear Regulatory Commission.

No specific compliance deudline is established under this subsection for the accident prevention requirements which may be imposed by the Administrator. The Administrator is to establish an affective date for each regulation at the time it is promulgated. The effective date may be different for new and existing facilities and requirements for new facilities may be applicable to facilities. which bogin construction at any time after the requirement is first proposed, Generally, requirements which only mandate changes in procedure can be implemented by new and existing facilities almost immediately. However, other cleanges which involve capital investment or the development of specialized programs may require more time to implement at existing facilities. As noted above, the Board may include in its recommendations for proposed rules com-pliance schedules taking into consideration these factors.

Accident prevention requirements promitigated pursuant to aut-section (f) may be enforced by the Administrator under section 118 of the Clean Air Action 2010, and approximately

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Detection. -- Subsection (g) of the proposed section 125 requires that regulations promulgated under authorition (f) include leak detection requirements for any facility handling an extremely has-ardone substance (in more than threshold amounts) which has been thread under subsection (c). The regulations must provide for the monitoring of all devices and systems, storage facilities and transfer points at which tisted autotances are present. Furthermore, such monitoring systems must be continuous in nature, that is, they must have the capability to provide immediate detection and notification to the facility operator that an accidental release of a covered substance is occurring.

Continuous monitoring technology is available to provide an carly warning of unplanted releases before they through cata-strophic results. Such technologies have been histalled voluntarily by a number of demestic and foreign somiounductor firms These systems permit the monitoring of as many as 25 different gases at systems permit the thinkering of an inary as an american game as many as 50 different points in the facility, with analysis of samples from each lineation during each thirty minute interval. Low level alarms as well as high level alarts can be triggered when an accidental raicase occurs, to notify the plant operator of the occurrence and that it can be corrected as soon as possible.

Requirements under this subsection may permit the use of a variety of continuous monitoring systems. This will depend on the specific circumstances of the each covered facility, including its size and type, as well as the quantity and characteristics of the hazardous substances present. The advantages and disadvantages of varicas detection systems are discussed in the EPA report. Review of Emergency Systems, published in June of 1988. EPA noted in the report that additional research and development needs to be conducted to improve the performance and lower the cost of some system designs before they can be widely useful in accident preven-tion programs. The Administrator should actively support such research with the research and development mithersties granted under this section.

Order authority.—Subsection (b) of the new section 129 porthorizes the Administrator to secure action through district courts which will abute any threat of imminent and substantial endanger-ment of public health, welfare or the environment due to the releage or potential release of an extremely hazardous substance. The Administrator may also issue orders (lactually requirements for medifications in equipment, processes, training and procedured and take other actions which may be necessary to protect human health, welfare or the environment. Parsons failing to comply with an order may be subject to a time of up to \$25,000 per day for each

day of non-compliance.

These authorities are not unlike the powers granted to the Adninistrator under other statutes including section 808 of the Clean Air Act and section 106 of CERCLA. The Administrator is directed to publish guidance for the use of subsection (b) in concert with

these other authorities.

The provisions of this subsection are very similar to those of section 106 of the Comprehensive Environmental Response, Compensation and Lightity Act which have been reviewed by the courts on several occasions. See especially R.F. Goodrich v. Martha, 697 F.

Supp. 89; United States v. Conservation Chemical Co., 619 F. Supp. 162; United States v. Ottati and Goss, 630 F. Supp. 1362; and United States v. Northeastern Pharmaceutical and Chemical Comρωφ, **P**. Supp. 832.

The Construction Chemical case includes the most extensive discussion of these provisions and will be quoted here at length to excitablish the intent of the legislation with respect to this subsection. First, "the United States does not have to prove that 'an imminent and substantial endangerment' actually exists. The statute clearly authorizes the United States to obtain relief when 'there may be an imminent and substantial ondangerment'. United States v. Conservation Chemical Co. 619 F. Supp. at 192.
Second, "the United States does not have to show that people may be endangered. If the statuted authorizes relief where there

may be endangered . . . [the statute] sutherizes relief where there may be endangerment to the 'public health or welfare or the environment.' Use of the disjunctive 'or' mandates the conclusion that possible endangerment to the public welfare alone, or a possible endangerment to the environment alone, will warrant relief." Furthering the control of the environment alone, will warrant relief."

dangement to the environment alone, will warrant relief." Furthermore, "the term 'public welfare' is exceptionally broad, and encompasses 'health and asfety, recroational, assithatin, environmental and economic interests.' City of El Paso v. Remolds, 597 F. Supp. 194." United States v. Conservation Chemical Co., 619 F Supp. at 192.

Third, us to the nature of the endangement which may give rise to action under this subsection, the Court said (of the comparable use of the term in CERChA) that "an endangement need not be an emergency in order for it to be 'imminent and substantial' 'United States v. Conservation Chemical Co., 619 F. Supp. at 192. "[The United States need not qualify the risk of harm in order to establish an endangement. Both the courts and Congress have recognized that the evaluation of a risk of harm involves medical and scientific conclusions that 'clearly lie on the frontiers of scientific knowledge,' such that 'proof with certainty is impossible." ". Further, "an endangement need not be an emergency in order for it to be 'innainent and aubstantial'". United States v. Conservation Chemical Co., 619 F. Supp. at 193.

In the application of the general stendard both in the context of court action and when issuing orders, the Court recognized (by

In the application of the general standard both in the context of court action and when issuing orders, the Court recognized (by citing the legislative history of the Safe Drinking Weter Art) that Congress intended for the Administrator to set in favor of protecting health, welfare and the environment rather than to interpret the authority of the statute narrowly. "Congress' emphasis on the protection of health and the environment, and especially its approval of the use of nondefinitive data in risk assessment, means that if an error is to be made in layor of protecting public health, welfare and the anade in layor of protecting public health, welfare and the onvironment. Thus, just as the word 'imminish' does not require proof that harm will occur tomorrow, and the word 'subsenntial' does not require quantification of the endangerment. Instead the decisional precedent demonstrates that an endangerment is substantial if there is resonable cause for concern that someone or something may be exposed to a risk of harm by a release or a smeething may be exposed to a risk of harm by a release or a threshold release of a hazardous substance

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if remedial action is not taken, keeping in mind that protection of the public health, welfare and the chrimanent is of atimary impartance." United States v. Conservation Chemical Co., 613 F. Supp. at 194.

Finally, it is important to note in this context that have of threatened have may be present even when only very small amounts of an extremely baserdone substance may be released. All though the Administrator may sensible threshold amounts of substances which are listed under subsection (c) for the purpose of indicating which facilities handling these substances must conduct hazard examinates pursuant to subsection (d), the presence of substances in amounts greater than such threshold amounts shall not be a necessary condition for taking action under this subsection. A substantial endengarment may occur in the presence of insections.

The Administrator may seek injunctive or other reliaf from a court or issue an administrative order when extramely happedous substances whether or not they are listed under subsection (c) may be presenting a threat or when listed embedances in quantities loss than threshold smoltets may present a torsel. This is expecially important in light of the evidence from the Acute Hazardous Events Date Base cloud shows which indicates that 67 percent of the injury syants recorded in that dath tone probled the release of substances in amounts less than the reportable quantity under CERCLA. Therefore, threshold quantities listed here may be different from reportable quantities under CERCLA.

It is not intended that the Administrance are the order sucherity evailable under this paragraph to conduct a plant-by-plant splety review of the chemical industry as is provided in the New Jersey Toxic Catastrophic Prevention Act. Although such an approach may be effective when implemented by an agency with significant expertise, the development of facility-specific risk reduction work plans is currently beyond the espabliky of the Environmental Protection Agency. EPA may conduct audits and isvestigations as part of an antercarner scheme for requirements promulgated under subspection (f., but it is not intended that a top-to-bottom investigation of every site handling on extremely here does not producted on a routine schedule. Such audits are the responsibility of the owners and operators of these facilities.

However, when a facility experiences an accidental ralanse which causes death, serious injury or substratial property damage, it, prime facts, presents a threat of imminent and substantial endangerment to public health. In other industries (as with pipeline dystations under the Hazardous Liquid Pipeline Safety Act) Iscillites experiencing such accidents are only allowed to go back into contration pursuant to an order (like that which may be issued order eshection (b)) which assures that conditions contributing to the excidental release have been corrected. The authorities of subsection (b) can be implemented to include a probabilition on restarting a facility where an accident has occurred until corrective action pursuant to an order to remove the imminent andangerment has been taken.

Enforcement.—Subsection (i) of the new section 129 includes a cross reference to other sections of the Act to provide for enforce-

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ment (section 113), information gathering (section 114), judicial review (section 307) and citizen suits (section 304) with respect to any standard or requirement promulgated under section 129 in the same manner as any standard or requirement that is promulgated under section 112 would be treated under such sections.

Presidential review.—Subsection (I) of the new section 129 requires the President to conduct a review of the section, prevention, mitigation and response authorities of the Federal Government to determine whether reorganization would facilitate more effective administration and implementation of such authorities. The review would include programs at the Environmental Protection Agency, the Department of Labor, the Department of Transportation, the Popertment of Transportation, who clear Regulatory Commission, the Federal Emergency Management Administration, and other agencies and departments. As many as 14 different departments and agencies have participated in the work of the National Response Teams which have been organized in the aftermath of chamical and petroleum sections.

The President may utilize the Chemical Safety Board authorized by subsection (e) as the agency to conduct the review required by this subsection. Employing the Board for such a purpose would facilitate an early integration of the Board's functions with those of other Preferal agencies and may provide a continuing point of emtact and coordination for this purpose after the initial review is complete. Testimony from the chemical industry to the committee in bearings indicated support by the regulated community for a coordinated Pederal approach to accident prevention and suggested that an agency like the Board might most effectively carry out that responsibility.

The President is to transmit a message on Federal sutherities for release prevention, mitigation and response to the Congress not later than 24 months after the enactment of this legislation containing a report on the report on the vaview which has been conducted and including any recummendations for legislative change in authorities which the President deems appropriate including the development of new authorities to assure a effective and efficient Federal response to entertrophic chemical accidents.

Nothing in this section would authorize the President to reassign responsibilities for accident prevention or mitigation delegated to a specific agency by statute.

State outhority.—The new section 129 of the Clean Air Act is intended to create a comprehensive Federal scheme for the prevention of accidental releases of extremely hazardotta substances. Under the provisions of section 112 (see smended by S. 1680), States may participate in this regulatory program. On other occasions when similar schemes have been centred, Federal courts have concluded that the Federal law is proemptive of some State and local outborities even when the preemption was not explicitly stated or intended. To assure that such a preemption of State or local law, whether statutory or common, does not occur, environmental legislation enacted by the Congress has consistently evidenced great ears to preserve State and local authority and the consequent rem-

edies available to ciciosus injured by the release of harmful substances into the environment. 8712

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ment clarifies that in such situations EPA can define the facility to be the office of the convicted company. In this fishion, all the company's operations will be affected by the heting. Discretionary rather than mandatory listing of additional fecilities provides the fishibility necessary for the EPA to consider variations in the structure of violating industries.

## JUDICIAL REVIEW PENDING RELECTIONS ATTOM OF RESULATION (Яветком (ИХ))

#### STIMMARY

Section 608 of the bill smends section 807 of the Art by providing that petitions for reconsideration of final actions by the Administrator shall not render those actions non-flust for purposes of judicis) review, nor extend the time within which petitions for vaview can be filed, nor postpone the effectiveness of the action (ny which reconsideration is sought.

The purpose of this amendment is to clarify and confirm that under section 207(b), as under section 307(d)(7)(H), a petition for Agency reconsideration does not render Agency action non-fine) for purposes of judicial review, and does not toll the 60-day time period for sasking judicial review. Title amendment is designed to ensure prompt judicial review of final actions by EPA, and to assure that the pendency of a petition for reconsideration does not delay that review or limit the affectiveness or enforceability of EPA's action pending reconsideration or judicial review. Notal distanding this amendment, however, the courts retain the discretion to stay consideration of the appeal pending reconding ration by EPA, as well as

in stay implementation of the rule.

This emandment overrules West Pena Pologr Co. v. EPA, 860 F. 2d 681 (3d Cir. 1988), which held that the pendency of a petition for agency reconsideration rendered the challenged agency action nonfinal for purposes of judicial review. Contrary to the analysis and decision in that case, this amendment reaffirms what buth the lan-yuage and the legislative history of section SU7(b) desponstrate, this is, that Congress intended EPA rulemaking action to be fless upon final promulgation, not upon a decision on reconsideration. EPA rulemaking under the Act is reviewable in the Federal courts of appeal only if review is sought within the Act's 80-day review period. This provision is essential to the efficient implementation of the Acr's regulatory program. Allowing West Fount to stand would delay judicial review of EPA actions, and would encourage the filiag of petitions for reconsideration as a delay tactic.

#### Cruzzen Suppe and Property (Section 600)

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Section 608 of the bill amends section 504 of the Act is a number of respects.

First, the bill amends section 204(a) of the Act by authorizing the Federal district courts to apply civil penalties in citizen suits,

which penalties shall be payable into a special fund created in new gullection 804(g).

Second, the amendment adds new subsection 304(g), which prorides that penalties assessed in citizen suits shall be deposited in a appoint fund in the United States Treasury. The bill further prosides that this special fund shall remain available for use by EPA to finance air compliance and enforcement activities.

Epirod, the bill amends section 304(c) of the Act to outhorise EPA to outhorise the Act to outhorise the to outhorise the following the any time, as a matter of right, in any citizen suit bisought under the Act. In addition, the bill provides that EPA can ministricte staelf for the plaintiff in those actions with regard to any

effirms for civil penalties.

Fourth, the bill forther amends section 304(a) of the Act by prowiding that a citizen suit may be brought against the Administrator grows there is alleged a failure to act that violates one or more of the grandards set out in section 367(d)(9) of the Act, or that constiinter unressonable delay. In addition, section 304(a) is amended to inter-interesonable delay. In addition, section 30%3 is almosted to make clear that the court's power to compel the Administrator to rike an action specified in the Act is not depended apon whether the Administrator has published a determination in the Federal Register that threshold preconditions to that action are met.

Fifth, a new paragraph is added to section 304(c) of the Act which provides that plaintiffs initiating citizen suits must serve a 1999 of their complaint upon the Attorney General of the United States and upon the Administrator. The bill further provides that the Citizen suits and an apportunity of the server and an apportunity of the server and an apportunity of the server and an apportunity of the server and an apportunity.

∰e, Whited States must be given advance notice of, and an opportuhity to comment upon, any consent judgment proposed to be en-

Royal in a citizen sult.
Softh, section 307(b) of the Act is amended to authorize challenges to EPA decisions to defer action under the Act. The bill propiges that such challenges may be brought either pursuant to seetion 907(b)(1), or in an action to compel performance in Federal dis-

frigt court under 804(a)(2

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Seventh, section 807 of the Act is amended by adding a new subexciton that allows any person to petition RPA to issue, amend, re-Chaider, or repeal any regulation or order issued under the Act. The section further provides that the Administrator shall either mant or deny any such petition within twelve months, onless the Petition arises under section 807(d)(7Xb), in which case the time four months. Finally, the section provides that the Administrator shall take final action "within a reasonable time" on petitions that are granted.

#### DESCRIPTION

These amendments make several important changes and clarifi-Calgons in the citizen enforcement provision of the Act.

As is the case in section 505 of the Clean Water Act and in section 7002 of the Resource Conservation and Recovery Act, the spendment would authorize Federal district courts to assess civil Penalties in citizen suits. The maximum of civil penalties for violations of the Act is necessary for deterrence, restitution and retribu-150n. Such penalties must be paid into a special fund in the United