

**EPA's 2017 Amendments to 40 CFR Part 68**

EPA CITATION/ AMENDMENT SUMMARY	IMPACT/EFFECT ON TCPA RULE, N.J.A.C. 7:31	ACTION(S) REQUIRED FOR COMPLIANCE/TIMEFRAME
<p><b><u>40 CFR 68.3: Definitions</u></b> In alphabetical order, insert the following definitions: active measures, CBI, inherently safer technology or design, LEPC, passive measures, practicability, procedural measures, root cause, third-party audit.</p>	Incorporated by reference	None
<p><b><u>40 CFR 68.10: Applicability (of Subpart A – General)</u></b> This section is modified to include the compliance dates for all of the 2017 RMP Amendments as discussed throughout this document.</p>	Incorporated by reference with changes at N.J.A.C. 7:31-1.1(c)3i through iv	All of the compliance dates specified in § 68.10 for the various amendments are reflected in the comments listed in this column. <b>(VARIES BY SECTION AS SHOWN BELOW)</b>
<p><b><u>40 CFR 68.12: General Requirements</u></b> Revisions are made to paragraphs (c)(4) and (c)(5); paragraph (c)(6) is added.</p> <p>Former paragraph (d)(4) is replaced with a new paragraph that specifies the need to coordinate response actions with local emergency planning and response agencies as provided in § 68.93.</p> <p>Former paragraph (d)(4) is renumbered as (d)(5) and modified to state that in addition to the development and implementation of an emergency response program, exercises shall be conducted as provided in §§ 68.90 to 68.96.</p> <p>Former paragraph (d)(5) is renumbered as (d)(6).</p>	<p>Not incorporated as per N.J.A.C. 7:31-1.1(b).</p> <p>Incorporated by reference</p> <p>Incorporated by reference with changes at N.J.A.C. 7:31-1.1(c)4iii(5)</p> <p>Incorporated by reference</p>	<p>See comments for §§ 68.90, 68.93, 68.95, and 68.96</p>

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<p><b><u>40 CFR 68.48, 68.50, 68.54, 68.58, 68.59 [NEW], 68.60</u></b>                  Various revisions are made to these sections.<sup>1</sup></p>	<p>Not incorporated.</p>	<p>None</p>
<p><b><u>40 CFR 68.65: Process Safety Information (PSI)</u></b>                  Paragraph (a) is revised to require that PSI is kept up-to-date. In paragraph (b), “Material Safety Data Sheets” is replaced with “Safety Data Sheets.”</p>	<p>Incorporated by reference</p>	<p>Ensure PSI is kept up-to-date  <b>(IMMEDIATELY)</b></p>
<p><b><u>40 CFR 68.67: Process Hazard Analysis</u></b>                  Paragraph (c)(2) is modified to specify that the findings from pertinent incident investigations shall be addressed during the process hazard analysis.</p> <p>Paragraph (c)(8) is added, which requires the process hazard analysis to address safer technology and alternative risk management measures applicable to eliminating or reducing risks from process hazards. The practicability of the inherently safer technologies and designs considered shall also be determined. These requirements only apply for processes in NAICS 322, 324, and 325.</p>	<p>Incorporated by reference</p> <p>The more stringent requirements of N.J.A.C. 7:31-4.12: Inherently Safer Technology Review will continue to apply for <u>all</u> processes.<sup>2</sup></p>	<p>Incident investigation <u>findings</u> must be addressed during the process hazard analysis. <b>(IMMEDIATELY)</b></p>
<p><b><u>40 CFR 68.71: Training</u></b>                  Paragraph (d) is added, which specifies that for the purposes of this section, the term “employee” shall also include supervisors with process operational responsibilities.</p>	<p>Incorporated by reference</p>	<p>Ensure that all Extraordinarily Hazardous Substance (EHS) operator training requirements (i.e., initial, refresher, etc.) are also met by supervisors with EHS process operational responsibilities  <b>(IMMEDIATELY)</b></p>
<p><b><u>40 CFR 68.79: Compliance Audits</u></b>                  Paragraph (f) is added, which specifies that the next required compliance audit shall be a third-party audit when an accidental release meeting the criteria in § 68.42(a) from a covered process at a stationary source has occurred; or an implementing agency requires a third-party audit due to conditions at the stationary source that could lead to an accidental release of a regulated substance; or when a</p>	<p>Incorporated by reference</p>	<p>Conduct third-party compliance audits as required by amended section 68.79 and new section 68.80 <b>(BY MARCH 15, 2021)</b></p>

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<p>previous third-party audit failed to meet the competency or independence criteria of § 68.80(c).</p> <p>Paragraph (g) is added, which describes the notification process to be followed when an implementing agency requires a third-party audit as described above, and the appeals process to be followed by the owner or operator when they feel an implementing agency's requirement for a third-party audit is unwarranted.</p> <p>Paragraph (h) is added, which provides the schedule for conducting a third-part audit, depending on the particular circumstances as discussed in paragraph (f) of this section.</p>	<p>Incorporated by reference</p> <p>Incorporated by reference</p>	
<p><b><u>40 CFR 68.80 [NEW]: Third-Party Audits</u></b></p> <p>Paragraph (a) refers to § 68.79(f) to specify when a third-party audit is required.</p> <p>Paragraph (b) states that the owner or operator can either engage a third-party auditor or assemble an auditing team that is led by a third-party auditor.</p> <p>Paragraph (c) outlines the competency and independence requirements that must be met by the third-party auditor(s).</p> <p>Paragraph (d) describes third-party auditor responsibilities.</p> <p>Paragraph (e) specifies the content of the audit report as related to this section.</p> <p>Paragraph (f) discusses the reporting and correction of findings, as well as third-party audit recordkeeping requirements.</p>	<p>Incorporated by reference</p> <p>Incorporated by reference</p> <p>Incorporated by reference</p> <p>Incorporated by reference</p> <p>Incorporated by reference</p> <p>Incorporated by reference</p>	<p>Conduct third-party compliance audits as required by amended section 68.79 and new section 68.80 (<b>BY MARCH 15, 2021</b>)</p>
<p><b><u>40 CFR 68.81: Incident Investigation</u></b></p> <p>Paragraph (a) is reworded to require the investigation of near misses as well as catastrophic releases.</p>	<p>Incorporated by reference with changes at N.J.A.C. 7:31-4.1(c)15 through 21, which extend the applicability of this section's</p>	<p>Incident investigation of all EHS accidents and potential catastrophic events (near misses) remains as a TCPA requirement.</p>

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<p>Paragraph (d) is revised to specify a timeframe of 12 months for completing an incident report in the absence of a written approval for an extension from the implementing agency. Report requirements are modified or added in a number of the paragraphs that follow, as indicated below:</p> <ul style="list-style-type: none"> <li>(d)(1) – revised to include the incident time and location</li> <li>(d)(3) – revised to require a chronological description of the incident<sup>3</sup></li> <li>(d)(4) – changed to require the name and amount of EHS involved in the incident or near miss</li> <li>(d)(5) – changed to require the consequences of the incident</li> <li>(d)(6) – added to require the inclusion of emergency response actions taken</li> <li>(d)(7) – added to require the inclusion of contributing factors and root causes [former (d)(4)]</li> <li>(d)(8) – added to require the inclusion of recommendations and the schedule for addressing them [former (d)(5) in part]</li> </ul>	<p>requirements to <u>all</u> EHS accidents and potential catastrophic events (near misses)<sup>2</sup>.</p> <p>Incorporated by reference with changes at N.J.A.C. 7:31-4.1(c)15 through 21.</p>	<p>Incident reports (including those for near misses) must be completed in 12 months and are required to include the emergency response action(s) taken. <b>(IMMEDIATELY)</b></p>
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<p><b><u>40 CFR 68.90: Applicability (of Subpart E – Emergency Response)</u></b></p> <p>Paragraph (a) is modified to indicate that a “responding” stationary source must meet the requirements of sections 68.93 (new), 68.95, and 68.96 (new).</p> <p>Paragraph (b) is modified to indicate that a “non-responding” stationary source does not need to comply with § 68.95 provided the criteria that follow are met, which are changed as shown below:</p> <p>(b)(4) – added to require the performance of annual emergency response coordination activities as specified under § 68.93 (new)</p> <p>(b)(5) – added to require the performance of annual notification exercises as specified under 68.96(a) [new]</p>	<p>Incorporated by reference</p> <p>Incorporated by reference with changes specified at N.J.A.C. 7:31-5.1(c)1 which requires non-responding facilities to comply with § 68.95.</p>	<p>Responding as well as non-responding facilities/stationary sources shall perform the emergency response coordination activities specified in new section 68.93 annually or more frequently if necessary. <b>(IMMEDIATELY)</b></p> <p>Responding as well as non-responding facilities/stationary sources shall also conduct notification exercises at least once per year as specified in paragraph (a) of new section 68.96. <b>(BY MARCH 15, 2021)</b></p>
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<p><b><u>40 CFR 68.93 [NEW]: Emergency Response Coordination Activities</u></b></p> <p>Paragraph (a) states that coordination with local emergency planning and response organizations shall occur at least annually to address any changes in the emergency response/action plan, community emergency response plan, etc.</p> <p>Paragraph (b) describes what must be provided to local emergency planning and response organizations as part of the coordination activities:</p> <ul style="list-style-type: none"> <li>• The facility's emergency response plan and/or emergency action plan</li> <li>• Updated emergency contact information</li> <li>• Any additional information deemed relevant to local emergency response planning</li> </ul> <p>Responding stationary sources must consult with local emergency response officials to establish schedules and plans for emergency response field and tabletop exercises.</p> <p>Paragraph (c) specifies the documentation requirements for the coordination activities.</p>	<p>Incorporated by reference</p> <p>Incorporated by reference, with the exception that a tabletop exercise as discussed in § 68.96 will still not be an acceptable substitute for a TCPA (EHS) emergency response exercise since it does not meet the more stringent requirements of N.J.A.C. 7:31-5.2(b)2.<sup>2</sup></p> <p>Incorporated by reference</p>	<p>Coordination activities as described in § 68.93 must be performed at least annually, and specific documentation requirements must be met for the coordination activities. <b>(IMMEDIATELY)</b></p>
<p><b><u>40 CFR 68.95: Emergency Response Program</u></b></p> <p>Paragraph (a)(1)(i) is revised to ensure notification procedures include emergency response agencies at the appropriate Federal and state levels.</p> <p>Paragraph (4) is modified to include the circumstances that would trigger a review/update of emergency response procedures.</p> <p>Paragraph (4)(c) is changed slightly by inserting "LEPC" in place of "local emergency planning committee."</p>	<p>Incorporated by reference</p> <p>Incorporated by reference</p> <p>Incorporated by reference</p>	<p>Ensure the emergency response program contains procedures for informing appropriate Federal, state, and local response agencies about accidental releases. <b>(IMMEDIATELY)</b></p>
<p><b><u>40 CFR 68.96 [NEW]: Emergency Response Exercises</u></b></p> <p>Paragraph (a) requires the performance and documentation of annual notification exercises at least once each calendar year.</p>	<p>Incorporated by reference</p>	<p>Responding as well as non-responding facilities/stationary sources shall perform</p>

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<p>For responding facilities, the notification exercise can be part of field exercises or tabletop exercises.</p> <p>Paragraph (b) states that an owner or operator subject to the requirements of § 68.95 shall develop and implement an exercise program for its emergency response program. Exercises shall involve facility response personnel and contractors as appropriate. Planning must be coordinated with local response officials, who shall also be invited to participate. Additional requirements of the emergency response exercise program include the following:</p> <p>(b)(1) – field exercises shall be conducted that simulate the accidental release of a regulated substance</p> <p>(i) – they shall be performed once every ten years or more frequently if deemed necessary by local response officials during coordination activities as specified in § 68.93</p> <p>(ii) – they shall include tests of notification procedures, communication systems, equipment deployment, etc.</p> <p>(b)(2) – tabletop exercises shall be conducted that simulate the accidental release of a regulated substance</p> <p>(i) – they shall be performed once every three years or more frequently if deemed necessary by local response officials during coordination activities as specified in § 68.93</p> <p>(ii) – they shall include discussions of notification procedures, equipment deployment procedures, etc.</p> <p>(b)(3) – an evaluation report shall be prepared within 90 days of each exercise</p> <p>Paragraph (c) describes the alternate means by which the emergency response exercise requirements of this section can be met:</p> <p>(c)(1) – exercises conducted to meet other Federal, state, or local requirements that also meet the requirements of this section</p>	<p>Incorporated by reference, with the following exceptions:</p> <ul style="list-style-type: none"> <li>• the frequency of field exercises as described in (b)(1)(i) must still be at least once every calendar year as specified in N.J.A.C. 7:31-5.2(b)2.</li> <li>• a tabletop exercise as described in (b)(2) will not be an acceptable substitute for a TCPA (EHS) emergency response exercise since it does not meet the more stringent requirements of N.J.A.C. 7:31-5.2(b)2.<sup>2</sup></li> </ul> <p>Incorporated by reference, with the exception that responses to accidental releases as described in paragraph (c)(2) will not be accepted as an alternate means of meeting the requirements of this section.</p>	<p>notification exercises at least once per year as specified in paragraph (a). Additional requirements regarding the planning, performance, and documentation of the emergency response exercises as specified in this section must be met. <b>(BY MARCH 15, 2021)</b></p>
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<p>(c)(2) – responses to accidental releases, provided the requirements of this section are met. An after-action report comparable to the evaluation report specified in paragraph (b)(3) of this section must be prepared within 90 days of the incident.</p>	<p>The more stringent requirements of N.J.A.C. 7:31-5.2(b) will apply.<sup>2</sup> An assessment and critique of an actual accidental release is not as thorough as an emergency response exercise, which is pre-planned and observed.</p>	
<p><b><u>40 CFR 68.130: List of Substances</u></b> Table 1 (List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention) and Table 4 (List of Regulated Flammable Substances and Threshold Quantities for Accidental Release Prevention) are updated to eliminate a few minor typographical errors and/or formatting issues.</p>	<p>Incorporated by reference</p>	<p>None</p>
<p><b><u>40 CFR 68.160: Registration</u></b> Paragraph (b)(21) is added to specify that pursuant to § 68.210(c), the RMP shall include the method and location of communication stating that chemical hazard information is available to the public.  Paragraph (b)(22) is added to specify that pursuant to § 68.210(e), the RMP shall indicate whether a public meeting has been held following an RMP reportable accident.</p>	<p>Not incorporated since § 68.210 is not incorporated as per N.J.A.C. 7:31-8.1(b).  Not incorporated since § 68.210 is not incorporated as per N.J.A.C. 7:31-8.1(b).</p>	<p>None</p>
<p><b><u>40 CFR 68.170: Prevention Program/Program 2</u></b> Several revisions are made to this section.</p>	<p>Not incorporated since this section was deleted as per N.J.A.C. 7:31-7.1(c)10.</p>	<p>None</p>
<p><b><u>40 CFR 68.175: Prevention Program/Program 3</u></b> Paragraph (e) is reworded to provide introductory text for the paragraphs that follow.  Paragraph (e)(1) is changed to match former paragraph (e), which requires the RMP to include the most recent PHA completion date and the technique used. The expected date of completion of any changes resulting from the PHA is no longer required.</p>	<p>Incorporated by reference  Incorporated by reference</p>	<p>Update the RMP to reflect the new data requirements specified in this section once the Department makes entry possible via eNJRMP. <b>(BY MARCH 14, 2022)</b></p>



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<p>Paragraph (e)(7) is added, which requires the RMP to include the inherently safer technology or design measures implemented since the last PHA, if any, and the technology category (substitution, minimization, simplification and/or moderation).</p> <p>Paragraph (k) is revised to also require the RMP to include whether the most recent compliance audit was a third-party audit.</p> <p>Paragraph (l) is modified to specify that the <u>completion</u> date of the most recent incident investigation is stated in the RMP.</p>	<p>Incorporated by reference</p> <p>Incorporated by reference</p> <p>Incorporated by reference</p>	
<p><b><u>40 CFR 68.180: Emergency Response Program</u></b></p> <p>The entire section is revised as summarized below to remove several requirements while adding others:</p> <p>(a) The owner or operator shall provide in the RMP:</p> <ul style="list-style-type: none"> <li>(1) Name, organizational affiliation, phone number, and e-mail address of LEPCs with which the stationary source last coordinated emergency response efforts</li> <li>(2) The date of the most recent coordination with the LEPCs</li> <li>(3) A list of Federal or state emergency plan requirements to which the stationary source is subject.</li> </ul> <p>(b) The owner or operator shall identify in the RMP whether the facility is a responding stationary source or a non-responding stationary source</p> <ul style="list-style-type: none"> <li>(1) For non-responding stationary sources, the owner or operator shall identify: <ul style="list-style-type: none"> <li>(i) For stationary sources with any regulated toxic substances, whether the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003</li> <li>(ii) For stationary sources with only regulated flammable substances, the date of the most recent coordination with the local fire department</li> </ul> </li> </ul>	<p>Incorporated by reference (the entire amended section)</p>	<p>Update the RMP to reflect the new data requirements specified in this section once the Department makes entry possible via eNJRMP. <b>(BY MARCH 14, 2022)</b></p>

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<p>(iii) What mechanisms are in place to notify the public and emergency responders when there is a need for emergency response</p> <p>(iv) The date of the most recent notification exercise</p> <p>(2) For responding stationary sources, the owner or operator shall identify:</p> <p>(i) The date of the most recent review and update of the emergency response plan</p> <p>(ii) The date of the most recent notification exercise</p> <p>(iii) The date of the most recent field exercise</p> <p>(iv) The date of the most recent tabletop exercise</p>		
<p><b><u>40 CFR 68.190: Updates</u></b>          Paragraph (c) is modified to require that the owner or operator meets applicable reporting and incident investigation requirements prior to de-registration.</p>	<p>Incorporated by reference</p>	<p>Before de-registering, complete all incident investigations as required by § 68.81 and update the RMP as specified in § 68.42. <b>(BY MARCH 14, 2022)</b></p>
<p><b><u>40 CFR 68.200: Recordkeeping</u></b>          This section is revised to specify that records supporting the implementation of the owner or operator's risk management program be kept at the stationary source.</p>	<p>Incorporated by reference with changes at N.J.A.C. 7:31-8.1(c)1.</p>	<p>Maintain required TCPA records at the facility for 5 years before potentially archiving offsite, as might be the case with mechanical integrity/preventive maintenance records and/or design safety review reports, etc. <b>(IMMEDIATELY)</b></p>
<p><b><u>40 CFR 68.210: Availability of Information to the Public</u></b>          Numerous revisions are made to this section.</p>	<p>Not incorporated as per N.J.A.C. 7:31-8.1(b).</p>	<p>None</p>

<sup>1</sup> These amendments cover changes to Subpart C - Program 2 Prevention Program requirements, which do not apply to TCPA registrants.

<sup>2</sup> Where NJ rules are more stringent, the less stringent amendments will be excluded from incorporation as provided by N.J.A.C. 7:31-1.4(e).

<sup>3</sup> Former paragraph (d)(3) was separated into several paragraphs, consistent with the incorporation by reference changes per N.J.A.C. 7:31-4.1(c)18, resulting in several items in § 68.81 to be renumbered.