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which the locomotive or engine becomes new, those standards or other requirements which are preempted include, but are not limited to, the following: emission standards, mandatory fleet average standards, certification requirements, retrofit and aftermarket equipment requirements, and non-federal in-use testing requirements. The standards and other requirements specified in the preceding sentence are preempted whether applicable to new or other locomotives or locomotive engines.

Subpart B—Procedures for Authorization

§ 1074.101 Procedures for California nonroad authorization requests.

(a) California must request authorization from the Administrator to enforce its adopted standards and other requirements relating to control of emissions from nonroad engines or vehicles that are not preempted by §1074.10(a) or §1074.12. The request must include the record on which the state rulemaking was based.

(b) After receiving the authorization request, the Administrator will provide notice and opportunity for a public hearing regarding such requests.

§ 1074.105 Criteria for granting authorization.

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California’s determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act (42 U.S.C. 7543).

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

§ 1074.110 Adoption of California standards by other states.

(a) Except as described in paragraph (b) of this section, any state other than California that has plan provisions approved under Part D of Title I of the Act (42 U.S.C. 7501 to 7515) may adopt and enforce emission standards for any period for nonroad engines and vehicles subject to the following requirements:

(1) The state must provide notice to the Administrator that it has adopted such standards.

(2) Such standards may not apply to new engines smaller than 175 horsepower that are used in farm or construction equipment or vehicles, or to new locomotives or new engines used in locomotives.

(3) Such standards and implementation and enforcement must be identical, for the period concerned, to the California standards authorized by the Administrator.

(4) The state must adopt such standards at least two years before the standards first take effect.

(5) California must have adopted such standards two years before the standards first take effect in the state that is adopting them under this section.

(b) States and localities, other than the State of California, may not adopt or attempt to enforce any standard or other requirement applicable to the control of emissions from spark-ignition engines smaller than 50 horsepower, except standards or other requirements that were adopted by that state before September 1, 2003.

§ 1074.115 Relationship of federal and state standards.

If state standards apply to a new nonroad engine or vehicle pursuant to authorization granted under section 209 of the Act (42 U.S.C. 7543), compliance with such state standards will be treated as compliance with the otherwise applicable standards of this chapter for engines or vehicles introduced into commerce in that state.
CHAPTER IV—ENVIRONMENTAL PROTECTION
AGENCY AND DEPARTMENT OF JUSTICE

SUBCHAPTER A—ACCIDENTAL RELEASE PREVENTION REQUIREMENTS;
RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT SECTION
112(r)(7); DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFOR-
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SUBCHAPTER A—ACCIDENTAL RELEASE PREVENTION REQUIREMENTS; RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT SECTION 112(r)(7); DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

PART 1400—DISTRIBUTION OF OFF-SITE CONSEQUENCE ANALYSIS INFORMATION

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Source: 65 FR 48131, Aug. 4, 2000, unless otherwise noted.

Subpart A—General

§ 1400.1 Purpose.

Stationary sources subject to the Chemical Accident Prevention Provisions of 40 CFR part 68 are required to analyze the potential harm to public health and welfare of hypothetical chemical accidents and submit the results of their analyses to the U.S. Environmental Protection Agency as part of risk management plans. This part governs access by the public and by government officials to the portions of risk management plans containing the results of those analyses and certain related materials. This part also restricts dissemination of that information by government officials.

§ 1400.2 Definitions.

For the purposes of this part:
(a) Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
(b) Administrator means the Administrator of the U.S. Environmental Protection Agency or his or her designated representative.
(c) Attorney General means the Attorney General of the United States or his or her designated representative.
(d) Federal government official means—
(1) An officer or employee of the United States; and
(2) An officer or employee of an agent or contractor of the Federal government.
(e) State or local government official means—
(1) An officer or employee of a State or local government;
(2) An officer or employee of an agent or contractor of a State or local government;
(3) An individual affiliated with an entity that has been given, by a state or local government, responsibility for preventing, planning for, or responding to accidental releases, such as a member of a Local Emergency Planning Committee (LEPC) or a State Emergency Response Commission (SERC), or a paid or volunteer member of a fire or police department; or
(4) An officer or employee or an agent or contractor of an entity described in paragraph (e)(3) of this section.
(f) LEPC means a Local Emergency Planning Committee created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.
§ 1400.3

(g) Member of the public or person means an individual.

(h) Official use means an action of a Federal, State, or local government agency or an entity described in paragraph (e)(3) of this section intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(i) Off-site consequence analysis (OCA) information means sections 2 through 5 of a risk management plan (consisting of an evaluation of one or more worst-case release scenarios or alternative release scenarios) for an identified facility and any electronic database created by the Administrator from those sections.

(j) Off-site consequence analysis (OCA) data elements means the results of the off-site consequence analysis conducted by a stationary source pursuant to 40 CFR part 68, subpart B, when presented in a format different than sections 2 through 5 of a risk management plan or any Administrator-created electronic database.

(k) Off-site consequence analysis (OCA) rankings means any statewide or national rankings of identified stationary sources derived from OCA information.

(l) Qualified researcher means a researcher who receives OCA information pursuant to 42 U.S.C. 7412(r)(7)(H)(vii).

(m) Related local government agencies means local government agencies, such as police, fire, emergency management, and planning departments, that are involved in chemical emergency planning, prevention, or response.

(n) Related state government agencies means State government agencies, such as emergency management, environmental protection, health, and natural resources departments, that are involved in chemical emergency planning, prevention, or response.

(o) Risk management plan (RMP) means a risk management plan submitted to the Administrator by an owner or operator of a stationary source pursuant to 40 CFR part 68, subpart G.

(p) SERC means a State Emergency Response Commission created under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.

(q) State has the same meaning as provided in 42 U.S.C. 7602(d) (a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

(r) Stationary source has the same meaning as provided in 40 CFR part 68 subpart A, §68.3.

(s) Vulnerable zone means the geographical area that could be affected by a worst-case or alternative scenario release from a stationary source, as indicated by the off-site consequence analysis reported by the stationary source in its risk management plan pursuant to the applicable requirements of 40 CFR Part 68. It is defined as a circle, the center of which is the stationary source and the radius of which is the “distance-to-endpoint,” or the distance a toxic or flammable cloud, overpressure, or radiant heat would travel after being released and before dissipating to the point that it no longer threatens serious short-term harm to people or the environment.

Subpart B—Public Access

§1400.3 Public access to paper copies of off-site consequence analysis information.

(a) General. The Administrator and the Attorney General shall ensure that any member of the public has access to a paper copy of OCA information in the manner prescribed by this section.

(b) Reading-room access. Paper copies of OCA information shall be available in at least 50 reading rooms geographically distributed across the United States and its territories. The reading rooms shall allow any person to read, but not remove or mechanically reproduce, a paper copy of OCA information, in accordance with paragraphs (c) through (g) of this section and procedures established by the Administrator and Attorney General.

(c) Limited number. Any person shall be provided with access to a paper copy of the OCA information for up to 10 stationary sources located anywhere in the country, without geographical restriction, in a calendar month.

(d) Additional access. Any person also shall be provided with access to a paper
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§ 1400.6 Enhanced local access.

(a) OCA data elements. Consistent with 42 U.S.C. 7412(r)(7)(H)(xii)(II), members of LEPCs and SERCs, and any other State or local government official, may convey to the public OCA data elements orally or in writing, as long as the data elements are not conveyed in the format of sections 2 through 5 of an RMP or any electronic database developed by the Administrator from those sections. Disseminating OCA data elements to the public...
Subpart C—Access to Off-Site Consequence Analysis Information by Government Officials.

§ 1400.7 In general.

The Administrator shall provide OCA information to government officials as provided in this subpart. Any OCA information provided to government officials shall be accompanied by a copy of the notice prescribed by 42 U.S.C. 7412(r)(7)(H)(vi).

§ 1400.8 Access to off-site consequence analysis information by Federal government officials.

The Administrator shall provide any Federal government official with the OCA information requested by the official for official use. The Administrator shall provide the OCA information to the official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

§ 1400.9 Access to off-site consequence analysis information by State and local government officials.

(a) The Administrator shall make available to any State or local government official for official use the OCA information for stationary sources located in the official's state.

(b) The Administrator also shall make available to any State or local government official for official use the OCA information for stationary sources not located in the official's state, at the request of the official.

(c) The Administrator shall provide OCA information to a State or local government official in electronic form, unless the official specifically requests the information in paper form. The Administrator may charge a fee to cover the cost of copying OCA information in paper form.

(d) Any State or local government official is authorized to provide, for official use, OCA information relating to stationary sources located in the official's state to other State or local government officials in that state and to State or local government officials in a contiguous state.

Subpart D—Other Provisions

§ 1400.10 Limitation on public dissemination.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), Federal, State, and local government officials, and qualified researchers are prohibited from disseminating OCA information and OCA rankings to the public. Violation of this provision subjects the violator to criminal liability as provided in 42 U.S.C. 7412(r)(7)(H)(v)
and civil liability as provided in 42 U.S.C. 7413.

§ 1400.11 Limitation on dissemination to State and local government officials.

Except as authorized by this part and by 42 U.S.C. 7412(r)(7)(H)(v)(III), Federal, State, and local government officials, and qualified researchers are prohibited from disseminating OCA information to State and local government officials. Violation of this provision subjects the violator to civil liability as provided in 42 U.S.C. 7413.

§ 1400.12 Qualified researchers.

The Administrator is authorized to provide OCA information, including facility identification, to qualified researchers pursuant to a system developed and implemented under 42 U.S.C. 7412(r)(7)(H)(vii), in consultation with the Attorney General.

§ 1400.13 Read-only database.

The Administrator is authorized to establish, pursuant to 42 U.S.C. 7412(r)(7)(H)(viii), an information technology system that makes available to the public off-site consequence analysis information by means of a central database under the control of the Federal government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.