

in this section for a gasoline manufacturer that complies with the standards in subpart C of this part using the procedures specified in subpart H of this part.

(a) *Annual compliance demonstration review.* An auditor must review annual compliance demonstrations as follows:

(1) Obtain the annual compliance reports for sulfur and benzene and associated batch reports submitted by the gasoline manufacturer under subpart J of this part.

(2)(i) For a gasoline refiner or gasoline blending manufacturer, compare the total volume of gasoline produced at each facility from the annual compliance report to the inventory reconciliation analysis obtained under § 1090.1810(b) and report any variances.

(ii) For a gasoline importer, compare the total volume of gasoline imported from the annual compliance report to the listing of imports supplied by the importer under § 1090.1815(b) and report any variances.

(3) For each facility, recalculate and report the following values:

(i) Compliance sulfur value, per § 1090.700(a)(1), and compliance benzene value, per § 1090.700(b)(1)(i).

(ii) Unadjusted average sulfur concentration, per § 1090.745(b), and average benzene concentration, per § 1090.700(b)(3).

(iii) Number of credits generated during the compliance period, or number of banked or traded credits needed to meet standards for the compliance period.

(iv) Number of credits from the preceding compliance period that are expired or otherwise no longer available for the compliance period being reviewed.

(v) Net average sulfur concentration, per § 1090.745(c), and net average benzene concentration, per § 1090.745(d).

(4) Compare the recalculated values under paragraph (a)(3) of this section to the reported values in the annual compliance reports and report any exceptions.

(5) Report whether the gasoline manufacturer had a deficit for both the compliance period being reviewed and the preceding compliance period.

(b) *Credit transaction review.* An auditor must review credit transactions as follows:

(1) Obtain the credit transaction reports submitted by the gasoline manufacturer under subpart J of this part and contracts or other information that documents all credit transfers. Also obtain records that support intracompany transfers.

(2) For each reported transaction, compare the supporting documentation with the credit transaction reports for the following elements and report any exceptions:

(i) Compliance period of creation.

(ii) Credit type (*i.e.*, sulfur or benzene) and number of times traded.

(iii) Quantity.

(iv) The name of the other company participating in the credit transfer.

(v) Transaction type.

(c) *Facility-level credit reconciliation.* Except as specified in paragraph (c)(4) of this section, an auditor must perform a facility-level credit reconciliation separately for each gasoline manufacturing facility as follows:

(1) Obtain the credits remaining or the credit deficit from the previous compliance period from the credit transaction reports obtained under paragraph (b) of this section.

(2) Calculate and report as a finding the net credits remaining at the end of the compliance period.

(3) Compare the ending balance of credits or credit deficit recalculated under paragraph (c)(2) of this section to the corresponding value from the annual compliance report obtained under paragraph (a) of this section and report any variances.

(4) For an importer, the procedures of this paragraph (c) apply at the company level.

(d) *Company-level credit reconciliation.* An auditor must perform a company-level credit reconciliation as follows:

(1) Obtain a credit reconciliation listing company-wide credits aggregated by facility for the compliance period.

(2) Foot and cross-foot the credit quantities.

(3) Compare and report the beginning balance of credits, the ending balance of credits, the associated credit activity at the company level in accordance with the credit reconciliation listing,

and the corresponding credit balances and activity submitted by the gasoline manufacturer under subpart J of this part.

(e) *Procedures for gasoline manufacturers that recertify BOB.* An auditor must perform the following procedures for a gasoline manufacturer that recertifies BOB under §1090.740 and incurs a deficit:

(1) Perform the procedures specified in §1090.1810(a) to review the gasoline manufacturer's registration and reports.

(2)(i) Obtain the recertified BOB batch reports submitted by the gasoline manufacturer under subpart J of this part.

(ii) Select a representative sample of recertified BOB batches from the batch reports.

(iii) Obtain supporting documentation (*e.g.*, PTDs, bills of lading, etc.) for each selected batch.

(iv) Compare the information on the batch reports to the supporting documentation and report any exceptions.

(v) Recalculate the deficits in accordance with the provisions of §1090.740 and report any discrepancies.

(vi) Confirm that the deficits are included in the annual compliance report and report any exceptions.

[85 FR 78469, Dec. 4, 2020, as amended at 90 FR 4371, Jan. 15, 2025]

**§ 1090.1845 Procedures related to meeting performance-based measurement and statistical quality control for test methods.**

(a) *General provisions.* (1) In addition to any other procedure required under this subpart, an auditor must perform the procedures specified in this section for a gasoline manufacturer.

(2) The auditor performing the procedures in this section must meet the laboratory experience requirements specified in §1090.55(b)(2).

(3) In cases where the auditor employs, contracts, or subcontracts an external specialist, all the requirements in §1090.55 apply to the external specialist. The auditor is responsible for overseeing the work of the specialist, consistent with applicable professional standards specified in §1090.1800.

(4) In the case of quality control testing at a third-party laboratory, the

auditor may perform a single attestation engagement on the third-party laboratory for multiple gasoline manufacturers if the auditor directly reviewed the information from the third-party laboratory. The third-party laboratory may also arrange for the auditor to perform a single attestation engagement on the third-party laboratory and make that available to gasoline manufacturers that have testing performed by the third-party laboratory.

(b) *Non-referee method qualification review.* For each test method used to measure a gasoline parameter as specified in a report submitted under subpart J of this part that is not one of the referee procedures listed in §1090.1360(d), the auditor must review the following:

(1) Obtain supporting documentation showing that the laboratory has qualified the alternative test method by meeting the precision and accuracy criteria specified under §1090.1365.

(2) Report a list of the alternative test methods used.

(3) Confirm that the gasoline manufacturer supplied the supporting documentation for each alternative test method and report any exceptions.

(4) If the auditor has previously reviewed supporting documentation under this paragraph (b) for an alternative test method at the laboratory, the auditor does not have to review the supporting documentation again.

(c) *Reference installation review.* For each reference installation used by the gasoline manufacturer during the compliance period, the auditor must review the following:

(1) Obtain supporting documentation demonstrating that the reference installation followed the qualification procedures specified in §1090.1370(c)(1) and (2) and the quality control procedures specified in §1090.1370(c)(3).

(2) Confirm that the laboratory completed the qualification procedures and report any exceptions.

(d) *Instrument control review.* For each test instrument used to measure gasoline parameters for batches selected as part of a representative sample under §1090.1810, the auditor must review whether test instruments were in control as follows:

**§ 1090.1850**

**40 CFR Ch. I (7–1–25 Edition)**

(1) Obtain a listing from the laboratory of the instruments and period when the instruments were used to measure gasoline parameters during the compliance period for batches selected as part of the representative sample under § 1090.1810.

(2) Obtain statistical quality assurance data and control charts demonstrating ongoing quality testing to meet the accuracy and precision requirements specified in § 1090.1375 or 40 CFR 80.47, as applicable.

(3) Confirm that the laboratory performed statistical quality assurance monitoring of its instruments under § 1090.1375 and report any exceptions.

(4) Report as a finding any test result that was excluded for being out of control and the laboratory did not have an assignable cause with appropriate supporting justification.

(5) Report as a finding the listing of instruments obtained under paragraph (d)(1) of this section and the compliance period when the instrument control review was completed.

[85 FR 78469, Dec. 4, 2020, as amended at 90 FR 4372, Jan. 15, 2025]

**§ 1090.1850 Procedures related to in-line blending waivers.**

In addition to any other procedure required under this subpart, an auditor must perform the procedures specified in this section for a gasoline manufacturer that relies on an in-line blending waiver under § 1090.1315.

(a)(1) Obtain a copy of the gasoline manufacturer's in-line blending waiver submission and EPA's approval letter.

(2) Confirm that the sampling procedures and composite calculations conform to the specifications in § 1090.1315(a)(2).

(3) Review the gasoline manufacturer's procedure for defining a batch for compliance purposes. Review available test data demonstrating that the test results from in-line blending correctly characterize the fuel parameters for the designated batch.

(4) Confirm that the gasoline manufacturer corrected their operations because of previous audits, if applicable.

(5) Confirm that the equipment and procedures have not materially changed from the gasoline manufacturer's in-line blending waiver. In cases of material change in equipment or procedure, confirm that the gasoline manufacturer updated their in-line blending waiver and report any exceptions.

(6) Perform any additional procedures unique to the blending operation, as specified in the in-line blending waiver, and report any findings, variances, or exceptions, as applicable.

(7) Confirm that the gasoline manufacturer has complied with all provisions related to their in-line blending waiver and report any exceptions.

(b)(1) Obtain test data, including head, middle, and tail results, for each batch produced under the gasoline manufacturer's in-line blending waiver.

(2) Review the alternative sampling plan to meet requirements to test head, middle, and tail samples for small batches under § 1090.1315(a)(9).

(3) Report as a finding any instance where only a single sample was taken for a small batch involving more than 8 hours of blending or more than 1 million gallons of fuel.

(4) Report as a finding any instance where two samples were unevenly distributed for a small batch or where only two samples were taken for a small batch involving more than 16 hours of blending or up to 2 million gallons of fuel.

(5) Determine and report the percentage of in-line blending batches where the gasoline manufacturer failed to perform the required head, middle, and tail samples due to unforeseen circumstances. Report as a finding if this percentage is greater than 10 percent of in-line blending batches for the calendar year.

(6) Determine and report each instance where a contingency plan for alternative sampling was utilized under § 1090.1315(a)(12).

[85 FR 78469, Dec. 4, 2020, as amended at 90 FR 4372, Jan. 15, 2025]

**PARTS 1091–1099 [RESERVED]**

# CHAPTER IV—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF JUSTICE

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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 INFOR-  
MATION

<i>Part</i>		<i>Page</i>
1400	Distribution of off-site consequence analysis infor- mation .....	673
1401–1499	[Reserved]	



## 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

#### Subpart A—General

- Sec.  
1400.1 Purpose.  
1400.2 Definitions.

#### Subpart B—Public Access

- 1400.3 Public access to paper copies of off-site consequence analysis information.  
1400.4 Vulnerable zone indicator system.  
1400.5 Internet access to certain off-site consequence analysis data elements.  
1400.6 Enhanced local access.

#### Subpart C—Access to Off-Site Consequence Analysis Information by Government Officials

- 1400.7 In general.  
1400.8 Access to off-site consequence analysis information by Federal Government officials.  
1400.9 Access to off-site consequence analysis information by State and local government officials.

#### Subpart D—Other Provisions

- 1400.10 Limitation on public dissemination.  
1400.11 Limitation on dissemination to State and local government officials.  
1400.12 Qualified researchers.  
1400.13 Read-only database.

AUTHORITY: 42 U.S.C. 7412(r)(7)(H)(ii).

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.*

(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

copy of the OCA information for stationary sources located in the jurisdiction of the LEPC where the person lives or works and for any other stationary source that has a vulnerable zone that extends into that LEPC's jurisdiction.

(e) *Personal identification for access to OCA information without geographical restriction.* Reading rooms established under this section shall provide a person with access to a paper copy of OCA information under paragraph (c) of this section only after a reading room representative has

(1) Ascertained the person's identity by viewing photo identification issued by a Federal, State, or local government agency to the person; and

(2) Obtained the person's signature on a sign-in sheet and a certification that the person has not received access to OCA information for more than 10 stationary sources for that calendar month.

(f) *Personal identification for access to local OCA information.* Reading rooms established under this section shall provide a person with access to a paper copy of OCA information under paragraph (d) of this section only after a reading room representative has

(1) Ascertained where the person lives or works by viewing appropriate documentation; and

(2) Obtained the person's signature on a sign-in sheet.

(g) *Record keeping.* Reading room personnel shall keep records of reading room use and certifications in accordance with procedures established by the Administrator and the Attorney General. These records shall be retained for no more than three years. Federal reading rooms will not index or otherwise manipulate the sign-in sheets according to individuals' names, except in accordance with the Privacy Act.

#### § 1400.4 Vulnerable zone indicator system.

(a) *In general.* The Administrator shall provide access to a computer-based indicator that shall inform any person located in any state whether an address specified by that person might be within the vulnerable zone of one or more stationary sources, according to

the data reported in RMPs. The indicator also shall provide information about how to obtain further information.

(b) *Methods of access.* The indicator shall be available on the Internet or by request made by telephone or by mail to the Administrator to operate the indicator for an address specified by the requestor. SERCs, LEPCs, and other related state or local government agencies are authorized and encouraged to operate the indicator as well.

#### § 1400.5 Internet access to certain off-site consequence analysis data elements.

The Administrator shall include only the following OCA data elements in the risk management plan database available on the Internet:

(a) The concentration of the chemical (RMP Sections 2.1.b; 3.1.b);

(b) The physical state of the chemical (RMP Sections 2.2; 3.2);

(c) The statistical model used (RMP Sections 2.3; 3.3; 4.2; 5.2);

(d) The endpoint used for flammables in the worst-case scenario (RMP Section 4.5);

(e) The duration of the chemical release for the worst-case scenario (RMP Section 2.7);

(f) The wind speed during the chemical release (RMP Sections 2.8; 3.8);

(g) The atmospheric stability (RMP Sections 2.9; 3.9);

(h) The topography of the surrounding area (RMP Sections 2.10; 3.10);

(i) The passive mitigation systems considered (RMP Sections 2.15; 3.15; 4.10; 5.10); and

(j) The active mitigation systems considered (RMP Sections 3.16; 5.11).

#### § 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

## § 1400.7

in a manner consistent with this provision does not violate 42 U.S.C. 7412(r)(7)(H)(v) and is not punishable under federal law.

(b) *OCA information.* (1) LEPCs and related local government agencies are authorized and encouraged to allow any member of the public to read, but not remove or mechanically copy, a paper copy of the OCA sections of RMPs (i.e., sections 2 through 5) for stationary sources located within the jurisdiction of the LEPC and for any other stationary source that has a vulnerable zone that extends into that jurisdiction.

(2) LEPCs and related local government agencies that provide read-only access to the OCA sections of RMPs under this paragraph (b) are not required to limit the number of stationary sources for which a person can gain access, ascertain a person's identity or place of residence or work, or keep records of public access provided.

(3) SERCs and related state government agencies are authorized and encouraged to allow any person to read, but not remove or mechanically copy, a paper copy of the OCA sections of RMPs for the same stationary sources that the LEPC in whose jurisdiction the person lives or works would be authorized to make available to that person under paragraph (b)(1) of this section.

(4) Any LEPC, SERC, or related local or State government agency that allows a person to read the OCA sections of RMPs in a manner consistent with this paragraph (b) shall not be in violation of 42 U.S.C. 7412(r)(7)(H)(v) or any other provision of federal law.

### **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).

## 40 CFR Ch. IV (7–1–25 Edition)

### **§ 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).

**EPA and Department of Justice**

**§ 1400.13**

and civil liability as provided in 42 U.S.C. 7413.

searchers pursuant to a system developed and implemented under 42 U.S.C. 7412(r)(7)(H)(vii), in consultation with the Attorney General.

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

**§ 1400.13 Read-only database.**

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.

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.

**§ 1400.12 Qualified researchers.**

The Administrator is authorized to provide OCA information, including facility identification, to qualified re-

**PARTS 1401–1499 [RESERVED]**



# CHAPTER V—COUNCIL ON ENVIRONMENTAL QUALITY

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## SUBCHAPTER A—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING REGULATIONS

<i>Part</i>		<i>Page</i>
1500–1508	[Reserved]	
SUBCHAPTER B—ADMINISTRATIVE PROCEDURES AND OPERATIONS		
1515	Freedom of Information Act procedures .....	683
1516	Privacy Act implementation .....	693
1517	Public meeting procedures of the Council on Environmental Quality .....	695
1518	Office of Environmental Quality Management Fund .....	699
1519–1599	[Reserved]	