

Criteria for granting a variance to a local emergency planning committee.

- (A) Before approving of an application for a variance, the commission shall find by a preponderance of the scientific evidence based upon generally accepted scientific principles or laboratory tests that:
- (1) The extremely hazardous substances, hazardous chemicals, or hazardous substances that would be subject to the reporting requirement pose a substantial risk of catastrophic injury to public health or safety or to the environment, or pose an extraordinary risk of injury to emergency response personnel responding to a release of the chemicals or substances, when the substances or chemicals are present at a facility in an amount equal to or exceeding the quantity for which reporting would be required under the reporting requirement for which the variance is sought; and
 - (2) The development and implementation of a local emergency response plan for releases of the substances or chemicals covered by the reporting requirement will reduce the risk of catastrophic injury to public health or safety or to the environment, or will reduce the extraordinary risk of injury to responding emergency response personnel, in the event of a release of the substances or chemicals; and
 - (3) The reporting requirement is necessary for the development of such a local emergency response plan.
- (B) The commission shall consider all of the following factors in its determination of whether the substances or chemicals that would be subject to the reporting requirement pose a substantial risk of catastrophic injury to public health, or safety or to the environment, or pose an extraordinary risk of injury to emergency response personnel responding to a release of the substance or chemical:
- (1) The specific characteristics and degree and nature of the hazards posed by a release of the extremely hazardous substances, hazardous chemicals, or hazardous substances;
 - (2) The proximity of the facilities that would be subject to the reporting requirement to residential areas, to areas where significantly large numbers of people are employed or otherwise congregate, and to environmental resources that are subject to injury;
 - (3) The quantities of extremely hazardous substances, hazardous chemicals, or hazardous substances that are routinely present at facilities that would be subject to the reporting requirement; and

- (4) The frequency with which the extremely hazardous substances, hazardous chemicals, or hazardous substances are present at the facilities that would be subject to the reporting requirement in quantities for which reporting would be required thereunder.

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