

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE D. HAZARDOUS SUBSTANCES

CHAPTER 505. MANUFACTURING FACILITY COMMUNITY RIGHT-TO-KNOW ACT

Sec. 505.001. SHORT TITLE. This chapter may be cited as the Manufacturing Facility Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the commission to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1293, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 3, eff. September 1, 2015.

Sec. 505.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS. (a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to North American Industry Classification System (NAICS), to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1294, eff. April 2, 2015.

Sec. 505.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515, Sec. 36(1), eff. September 1, 2015.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(3-a) "Commission" means the Texas Commission on Environmental Quality.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(1), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(1), eff. September 1, 2015.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(8-a) "Executive director" means the executive director of the commission.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person, and that is in North American Industry Classification System (NAICS) Codes 31-33.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the administrative head of a fire department, including a volunteer fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the United States Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not

occur under normal conditions of use;

(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(20-a) "Safety data sheet" or "SDS" means a document containing chemical hazard and safe handling information that is

prepared in accordance with the requirements of the OSHA standard for that document.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as established by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the commission under Section 505.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the commission for administering its functions related to EPCRA.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under 29 CFR Section 1910.1200(e)(1)(i).

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1295, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1296, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(100), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(1), eff. September 1, 2015.

Sec. 505.005. APPLICABILITY OF CHAPTER. (a) Facility operators whose facilities are in NAICS Codes 31-33 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a

sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) foods, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to

that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The commission shall develop and implement an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008. Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1297, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 5, eff. September 1, 2015.

Sec. 505.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by commission rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the commission, along with the appropriate fee, according to the procedures specified by commission rules.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA Section 311, but a fee may not be associated with filing the report.

(e) Except as provided by Section 505.0061(c), a facility operator shall file the tier two form with the commission not later than the 90th day after the date on which the operator begins

operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance.

(e-1) Except as provided by Section [505.0061\(c\)](#), a facility operator shall file an updated tier two form with the commission:

(1) not later than the 90th day after the date on which the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of a previously reported hazardous chemical or extremely hazardous substance; and

(2) as otherwise required by commission rule.

(e-2) A facility operator shall furnish a copy of each tier two form and updated tier two form filed with the commission under this section to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a safety data sheet with the commission on the commission's request.

(g) The commission shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section [505.015](#), documents filed under this chapter are subject to Chapter [552](#), Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.1298, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. [942](#)), Sec. 6, eff. September 1, 2015.

Sec. 505.0061. REPORTING FOR FACILITIES STORING AMMONIUM NITRATE USED IN FERTILIZER. (a) In this section, "ammonium nitrate" and "ammonium nitrate storage facility" have the meanings assigned by Section [63.151](#), Agriculture Code.

(b) As soon as practicable but not later than 72 hours after the commission receives a tier two form reporting the presence of



ammonium nitrate at an ammonium nitrate storage facility, the commission shall furnish a copy of the form to the state fire marshal and the Texas Division of Emergency Management. The state fire marshal shall furnish a copy of the form to the chief of the fire department having jurisdiction over the facility. The Texas Division of Emergency Management shall furnish a copy of the form to the appropriate local emergency planning committee.

(c) The operator of an ammonium nitrate storage facility shall file:

(1) a tier two form with the commission not later than 72 hours after the operator:

(A) begins operation; or

(B) has a reportable addition, at the appropriate threshold, of previously unreported ammonium nitrate; and

(2) an updated tier two form not later than 72 hours after the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of previously reported ammonium nitrate.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 7, eff. September 1, 2015.

Sec. 505.007. DIRECT CITIZEN ACCESS TO INFORMATION. (a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the commission.

(d) Any facility electing to furnish the material to the commission under Subsection (c) may during that same filing period

inform persons making requests under Subsection (a) of the availability of the information at the commission and refer the request to the commission for that filing period. The notice to persons making requests shall state the address of the commission and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 8, eff. September 1, 2015.

Sec. 505.008. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the executive director, the fire chief, or the local emergency planning committee a copy of the SDS for any chemical on the tier two form furnished under Section 505.006 or for any chemical present at the facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515, Sec. 36(2), eff. September 1, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1299, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 9, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(2), eff. September 1, 2015.

Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On

presentation of appropriate credentials, a commission representative may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1300, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 10, eff. September 1, 2015.

Sec. 505.015. TRADE SECRETS. Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.016. RULES; FEES. (a) The commission may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The commission by rule may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee for facilities may not exceed:

(1) \$100 for each required submission having no more than 25 hazardous chemicals or hazardous chemical categories;

(2) \$200 for each required submission having no more than 50 hazardous chemicals or hazardous chemical categories;

(3) \$300 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories;

(4) \$400 for each required submission having no more than 100 hazardous chemicals or hazardous chemical categories; or

(5) \$500 for each required submission having more than 100 hazardous chemicals or chemical categories.

(c) To minimize the fees, the commission by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The commission may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA. An amount not to exceed 15 percent of the fees collected under this chapter and Chapter 506, or 15 percent of the amount of fees paid by the state and its political subdivisions under Chapter 506, whichever is greater, may be used by the Department of State Health Services to administer Chapter 502.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1304, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 11, eff. September 1, 2015.

Sec. 505.017. NOTICE ISSUED UNDER EMERGENCIES. (a) When immediate notification of a release by a facility to the state emergency response commission is required in accordance with EPCRA, the state agency responsible for the information submitted to the state emergency response commission, on receipt of the required notification, shall make a determination as to whether the release reported will substantially endanger human health or the environment.

(b) If the responsible state agency determines that a release will substantially endanger human health or the environment, the agency shall, on request, notify the state senator or representative who represents the area in which the facility is located of the release within four hours of receipt of the original notification.

Added by Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 3, eff. September 1, 2011.

Sec. 505.018. ENFORCEMENT. (a) A facility operator may not violate this chapter, commission rules adopted under this chapter, or an order issued under this chapter.

(b) The commission may enforce this chapter under Chapter 7, Water Code, including by issuing an administrative order that

assesses a penalty or orders a corrective action.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. [942](#)), Sec. 12,  
eff. September 1, 2015.