

HEALTH AND SAFETY CODE

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

SUBTITLE D. HAZARDOUS SUBSTANCES

CHAPTER 507. NONMANUFACTURING FACILITIES COMMUNITY RIGHT-TO-KNOW

ACT

Sec. 507.001. SHORT TITLE. This chapter may be cited as the Nonmanufacturing Facilities Community Right-To-Know Act.

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

Sec. 507.002. 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 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. 3.1318, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 22, eff. September 1, 2015.

Sec. 507.003. FEDERAL LAWS AND REGULATIONS. (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 the North American Industry Classification System (NAICS) means a reference to the most current version of that system.

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. 23, eff. September 1, 2015.

Sec. 507.004. 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. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 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 (H.B. 942), Sec. 36(5), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 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 and 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 11-23 or Codes 42-92. The term does not include a facility subject to Chapter 506.

(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 that 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 general 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 a 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 507.006 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.

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. 3.1319, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1320, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 24, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(5), eff. September 1, 2015.

Sec. 507.005. APPLICABILITY OF CHAPTER. (a) Facility operators whose facilities are in North American Industry Classification System (NAICS) Codes 11-23 or NAICS Codes 42-92 and who are not subject to Chapter 506 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) food, 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 by 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. 3.1321, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. [942](#)), Sec. 25, eff. September 1, 2015.

Sec. 507.006. 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 [507.0061\(c\)](#), 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 [507.0061\(c\)](#), 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 507.012, 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. 3.1322, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 26, eff. September 1, 2015.

Sec. 507.0061. 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 with the commission 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. 27, eff. September 1, 2015.

Sec. 507.007. 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 507.006 or for any chemical present at the facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515, Sec. 36(6), 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. 3.1323, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 28, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(6), eff. September 1, 2015.

Sec. 507.008. 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. 3.1324, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 29, eff. September 1, 2015.

Sec. 507.012. 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. 507.013. 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 may not exceed:

(1) \$50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) \$100 for each required submission having more than 75 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.

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. 3.1328, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 30, eff. September 1, 2015.

Sec. 507.014. 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. 31, eff. September 1, 2015.