

HEALTH & SAFETY CODE

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 director 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.

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 Standard Industrial Classification (SIC), 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.

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) "Board" means the Texas Board of Health.

(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.

(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) "Department" means the Texas Department of Health.

(6) "Director" means the director of the Texas Department of Health.

(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.

(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 Standard Industrial Codes (SIC) 20-39.

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

(12) "Fire chief" means the elected or paid administrative head of a 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 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 material safety data sheet (MSDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.

(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.

(18) "Material safety data sheet" or "MSDS" 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.

(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 for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.

(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 defined by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the department 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 department 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)(i).

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

Sec. 505.005. APPLICABILITY OF CHAPTER. (a) Facility operators whose facilities are in SIC Codes 20-39 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 director shall develop 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.

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 board 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 appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(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) A facility operator shall file the tier two form with the department 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. The operator shall furnish a copy of each tier two form 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 material safety data sheet with the department on the department's request.

(g) The department 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.

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 department.

(d) Any facility electing to furnish the material to the department under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the department 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.

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 director, the fire chief, or the local emergency planning committee a copy of the MSDS for any chemical on the tier two form furnished under Section 505.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the National Fire Protection Association 704 identification system if an equivalent system is not in use.

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

Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, an officer or representative of the director 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.

Sec. 505.010. ADMINISTRATIVE PENALTY. (a) The director may assess an administrative penalty against an operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the

department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator may respond as provided by either Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) Except as provided in Subsection (l), the director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) If a violation involves a failure to make a good faith effort to comply with this chapter, the director may assess the administrative penalty at any time.

(m) In determining the amount of the penalty, the director shall consider:

- (1) the operator's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the employer's demonstrated good faith;
- (5) the duration of the violation; and
- (6) other matters as justice may require.

(n) The penalty may not exceed \$500 a day for each day a violation continues, with a total not to exceed \$5,000 for each violation.

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

Sec. 505.011. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.

(e) If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the local emergency planning committee or a member organization instead of paying the penalty. The department may specify that the operator join the local emergency planning committee and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.

(f) The director may consolidate a hearing held under this section with another proceeding.

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

Sec. 505.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.

(b) Except as provided by in Section 505.011(e), within 30 days after the date the director's order is final as provided by Subchapter F, Chapter 2001, Government Code, the facility operator shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a facility operator who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the director by certified mail.

(d) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the director:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the facility operator to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the facility operator paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the facility operator. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the facility operator gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the facility operator gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the facility operator pays the amount.

(i) All proceedings under this section are subject to Chapter 2001, 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(49), (53), (59), eff. Sept. 1, 1995.

Sec. 505.013. CIVIL PENALTIES. (a) A person who knowingly discloses false information or negligently fails to disclose a hazard as required by this chapter is subject to a civil penalty of

not more than \$5,000 for each violation.

(b) This section does not affect any other right of a person to receive compensation under other law.

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

Sec. 505.014. CRIMINAL PENALTIES. (a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by this chapter commits an offense punishable by a fine of not more than \$25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

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

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 board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board 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 board 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 department 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. The department may use up to 15 percent of the fees collected under this chapter and Chapter 506, or the amount of fees paid by the state and its political subdivisions under Chapter 506, whichever is greater, to administer Chapter 502.

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