



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Emergency Response Commission

RULE TYPE: Legislative

TITLE-SERIES: 55-01

RULE NAME: Emergency Planning and Community
Right-To-Know

CITE AUTHORITY: W. Va. Code §15-5A-5.

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Brandolyn N Felton-Ernest -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 55
LEGISLATIVE RULE
STATE EMERGENCY RESPONSE COMMISSION**

**SERIES 1
EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW**

§55-1-1. General.

1.1. Scope. -- This rule establishes fees the implementation of Title III of the Superfund Amendments and Reauthorization Act of 1986 and W. Va. Code §15-5A-1 et seq. for the collection of public of information on certain hazardous and toxic chemicals in communities throughout West Virginia.

1.2. Authority. -- W. Va. Code §15-5A-5.

1.3. Filing Date. -- ~~May 12, 2021.~~

1.4. Effective Date. -- ~~July 1, 2021.~~

1.5 Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~July~~ August 1, 2026~~31~~.

§55-1-2. Definitions.

2.1. The following terms shall have the meaning described by this section:

2.1.1. "Emergency planning district" means a geographic area designated by the SERC as requiring its own comprehensive emergency response plan. The SERC may designate existing political subdivisions or multijurisdictional planning organizations as such districts.

2.1.2. "Facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person) and subject to the provisions of Section 302 of Title III, 42 U.S.C. 11002.

2.1.3. "LEPC" means a Local Emergency Planning Committee, for each emergency planning district, which is appointed by the SERC in accordance with the provisions of W. Va. Code §15-5A-7.

2.1.4. "SERC" means the State Emergency Response Commission, a statutory body created pursuant to W. Va. Code §15-5A-1 et seq.

2.1.5. "Title III" means the Emergency Planning and Community Right-to-Know Act of 1986, as amended, and the regulations promulgated thereunder. 42 U.S.C. 11001 et seq. P.L. 99-499.

2.1.6. "Emergency notification" means the notification required by Section 304 of Title III, 42 U.S.C. 11004, which must be given immediately in the event of a release of a listed hazardous substance that exceeds the reportable quantity for that substance.

2.1.7. "Emergency response plan" means the plan to be developed by each Local Emergency

Planning Committee in accordance with W. Va. Code §15-5A-7 and 42 U.S.C. 11003.

2.1.8. "Hazardous chemical inventory form" means the Emergency and Hazardous Chemical Inventory Form that must be submitted by covered facilities to the SERC, the LEPC and the local fire department which has jurisdiction over the facility.

2.1.9. "List of MSDS Chemicals" means a list of chemicals submitted to the SERC, the LEPC and the local fire department in lieu of the requirement to submit copies of MSDS.

2.1.10. "MSDS" means material safety data sheet, a form required by the Occupational Safety and Health Act of 1970, as amended, and the regulations promulgated thereunder, 29 U.S.C. 651 et seq., and in accordance with the Federal Occupational Safety and Health Administration's Hazard Communication Standard, 40 C.F.R. 1910.1200, for reporting health and safety information on hazardous substances.

2.1.11. "Toxic chemical release form" means the form that must be reported annually of toxic chemical releases on a Toxic Chemical Release Reporting Form to the EPA and a State Official designated by the Governor pursuant to Section 313 of Title III, 42 U.S.C. 11023.

2.1.12. "Threshold quantity" means the amount of a substance present at a facility in which a facility becomes subject to the provisions of Title III, 42 U.S.C. 11002.

2.1.13. "Gasoline dispensing facility" means any retail site where gasoline is transferred from a stationary storage tank to a motor vehicle gasoline tank used to provide fuel to the engine of that motor vehicle.

2.1.14. "Oil and gas extraction storage facility" means a facility that exclusively stores crude oil or liquid hydrocarbons or other fluids resulting, obtained or produced in connection with the production or storage of crude oil or natural gas; receives the crude oil liquid hydrocarbon or other stored fluids by direct conveyance through piping or tubing; is located on the same site as, or on a site adjacent to, the well from which the crude oil, liquid hydrocarbons, or other fluids are produced or obtained; and is used for the storage of the crude oil, liquid hydrocarbons or other fluids prior to their transportation off the premises of the facility for sale, use or disposal.

2.2 Terms not defined in these regulations, nor having a meaning ascribed to them pursuant to W. Va. Code §15-5A-3, shall have the meaning and definition ascribed 42 U.S.C. 11001 to 11050 and in 40 C.F.R. Parts 350, 355 and 370 inclusive of the appendices corresponding to Part 355.

§55-1-3. Reporting by Covered Facilities.

3.1. The owner or operator of a facility shall prepare and submit MSDS or list of MSDS chemicals to the SERC, the LEPC and the local fire department with jurisdiction over the facility containing the information required by and in accordance with Section 311 of Title III, 42 U.S.C. 11021.

3.2. The owner or operator of a facility shall prepare and submit hazardous chemical inventory forms to the SERC, the LEPC and the local fire department with jurisdiction over the facility containing the information required by and in accordance with Section 312 of Title III, 42 U.S.C. 11022.

3.3. The owner or operator of a facility shall prepare and submit toxic chemical release forms to the SERC as required by and in accordance with Section 313 of Title III, 42 U.S.C. 11023.

§55-1-4. Emergency Notification.

The owner or operator of a facility subject to this rule shall provide emergency notification of any release as required by and in accordance with Section 304 of Title III, 42 U.S.C. 11004 which provisions are hereby made a part of this rule and are incorporated by reference.

§55-1-5. Fees.

5.1. All facilities required to submit annual hazardous chemical inventory forms required by Sections 312 of Title III, 42 U.S.C. 11022, shall pay the fees set forth in this section. All fees collected shall be deposited into a subaccount of the SERC and may only be used for purposes authorized by W. Va. Code §15-5A-1 et seq.

5.2. A facility shall pay the following fees when submitting annual hazardous chemical inventory forms as required under Sections 312 of Title III, 42 U.S.C. 11022. All annual fees imposed by this Section 5 of this rule shall be payable to the SERC on or before the first day of March of each year.

5.2.a. A base inventory fee of twenty-five dollars (\$25.00) for each facility. Depending on the type of facility, the following inventory fees shall also apply:

5.2.a.1. An owner or operator of a facility subject to inventory reporting which has present in excess of five hazardous chemicals in an amount equal to or above the threshold quantity shall pay an additional annual inventory filing fee of ten (\$10) dollars per hazardous chemical for each hazardous chemical in excess of five. This fee does not apply if the hazardous chemical reported on the hazardous chemical inventory form is also an extremely hazardous substance to which the additional annual inventory filing fee is imposed by Section 5.2.a.2 of this rule.

5.2.a.2. An owner or operator of a facility subject to inventory reporting shall pay an additional annual inventory filing fee of fifty (\$50) dollars per extremely hazardous substance for each extremely hazardous substance reported on the hazardous chemical inventory form.

5.2.a.3. An owner or operator of an oil and gas extraction storage facility who is required to submit a hazardous chemical inventory form must only submit one base inventory fee for reporting up to thirty-five (35) oil and gas extraction storage facilities. For every facility which is reported by an owner or operator of an oil and gas extraction storage facility which would exceed thirty five (35) facilities for that owner or operator, an additional filing fee of ten dollars (\$10.00) shall be paid by the owner or operator for every facility over thirty five of this type of facility reported by that owner or operator .

5.3. An owner or operator of a facility, who is subject to this rule and who fails to submit the annual inventory filing fee by the deadline established in subsection 5.3. of this rule each year shall pay to the SERC, in addition to the fees owed as described in section 5.3.a of this rule, a late fee equal to twenty percent (20%) of the total fees due and owing the SERC.

5.4. In no event shall the total annual fees imposed on any one facility exceed the fees established under the provisions of W. Va. Code §15-5A-5(j), exclusive of the late fee imposed by Section 5.4 of this rule.

5.5. A municipal corporation of this state which operates two or more facilities which are subject to

the annual inventory filing fees imposed by this subsection may aggregate the fees for all such facilities and remit such fees with one reporting form as though all such facilities constituted a single facility.

§55-1-6. Enforcement.

6.1. The Chairman of the SERC may order a facility owner or operator to comply with the requirements of applicable federal law, W. Va. Code §15-5A-1 et seq. and these rules.

6.2. Upon failure of an owner or operator of a facility to comply with the provisions of applicable federal law, W. Va. Code §15-5A-1 et seq. or this rule, the Chairman may request the attorney general to commence an action for civil penalties, injunctive relief or other appropriate relief to enforce such provisions, rules or order.