

CHAPTER 156
FORMERLY
SENATE BILL NO. 68

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend § 6305, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6305 Material safety data sheets; safety data sheets.

(a) The owner or operator of any facility which is required to prepare or have available a material safety data sheet or safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that act (29 U.S.C. § 651 et seq.) or the Delaware Hazardous Chemical Information Act and regulations promulgated under that act (Chapter 24 of Title 16) shall submit a material safety data sheet or safety data sheet for each such chemical present at the facility in an amount which equals or exceeds the threshold quantities established under subsection (c) of this section or a list of such chemicals, as described in subsection (d) of this section, to the Department.

(b) Submission to the Department under this section shall serve as submission to the appropriate local emergency planning committee, the State Emergency Response Commission and the fire department with jurisdiction over the facility as set forth under 42 U.S.C. § 11021 and regulations established under that act.

(c) The threshold quantities for the purpose of this section shall be as follows:

(1) For substances identified as hazardous chemicals, except as provided in paragraphs (2) and (3) of this subsection, the threshold shall be 55 gallons or 500 pounds, whichever is lower.

(2) For substances included in the list of extremely hazardous substances under § 6303 of this title, the threshold shall be 55 gallons, 500 pounds or the threshold planning quantity, whichever is lower.

(3) For a substance used solely for the purpose of heating a building or buildings at a facility, the threshold for that substance at that facility shall be 10,000 pounds.

(4) For the purposes of requests under subsection (f) of this section, the threshold shall be zero.

(d) The list referred to under subsection (a) of this section shall include each of the following:

(1) A list of the hazardous chemicals for which a material safety data sheet or safety data sheet is required under the Occupational Safety and Health Act of 1970 and regulations promulgated under the act or the Delaware Hazardous Chemical Information Act and regulations promulgated under that act (Chapter 24 of Title 16), grouped in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under the act, or in such other categories as the Secretary may prescribe under subsection (e) of this section.

(2) The chemical name or the common name of each such chemical as provided on the material safety data sheet or safety data sheet.

(3) Any hazardous component of each such chemical as provided on the material safety data sheet or safety data sheet.

(e) For purposes of the list under subsection (d) of this section, the Secretary may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(f) Upon request by the local emergency planning committee or the Department, the owner or operator of a facility subject to this section shall submit the material safety data sheet or safety data sheet for a chemical to the person making the request.

(g) The initial material safety data sheet or safety data sheet or list required under this section shall be submitted before the later of:

(1) Twelve months after the date of the enactment of this requirement; or

(2) Three months after the owner or operator of a facility is required to prepare or have available a material safety data sheet or safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that act or the Delaware Hazardous Chemical Information Act and regulations promulgated under that act (Chapter 24 of Title 16); or

(3) Three months after a chemical requiring a material safety data sheet or safety data sheet becomes present in an amount which equals or exceeds the threshold quantity.

(h) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet or safety data sheet was previously submitted, a revised sheet shall be submitted.

Section 2. Amend § 6306, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6306 Emergency and hazardous chemical inventory reporting.

(a) The owner or operator of any facility which is required to prepare or have available a material safety data sheet or safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. § 651 et seq.] and regulations promulgated under that act or the Delaware Hazardous Chemical Information Act and regulations promulgated under that act shall prepare and submit an emergency and hazardous chemical inventory form, hereafter in this chapter referred to as an "inventory form," for each such chemical present at the facility in an amount which equals or exceeds the threshold quantities established under subsection (d) of this section to the Department.

(e) A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or safety data sheet or a listing is required under § 6305 of this title.

(f) Inventory forms shall contain the following information, as a minimum, for each hazardous chemical present at the facility:

(1) The chemical name or the common name of the chemical as provided on the material safety data sheet or safety data sheet.

Section 3. Amend § 6310, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6310 Reporting fees.

(a) Excluding reports on mixtures, the reporting fees shall be assessed as follows: A filing fee not to exceed \$40 shall be assessed for each hazardous chemical reported on an inventory form under § 6306 of this title. A filing fee not to exceed \$80 shall be assessed for each extremely hazardous substance reported on an inventory form under § 6306 of this title. Effective with inventory forms due on or before March 1, 2018 covering calendar year 2017, and for subsequent reporting years, an increased fee of \$60 shall be assessed for each hazardous chemical, and an increased fee of \$100 shall be assessed for each extremely hazardous substance, in lieu of the prior fee amounts.

(b) For reports on mixtures, the reporting fees shall be assessed as follows: A filing fee not to exceed \$40 shall be assessed for each mixture reported on an inventory form under § 6306 of this title containing extremely hazardous substances in a concentration of less than 10 percent by weight. A filing fee not to exceed \$80 shall be assessed for each mixture reported on an inventory form under § 6306 of this title containing extremely hazardous substances in a concentration of 10 percent or more by weight. Effective with inventory forms due on or before March 1, 2018 covering calendar year 2017, and for subsequent reporting years, an increased fee of \$60 shall be assessed for each mixture containing extremely hazardous substances in a concentration of less than 10 percent by weight, and an increased fee of \$100 shall be assessed for each mixture containing extremely hazardous substances in a concentration of 10 percent or more by weight, in lieu of the prior fee amounts.

(c) The maximum fee collected under this section shall not exceed \$5,000 per year per facility.

(d) Using procedures established by the Department, the owner and/or operator of each facility, subject to the fee provisions of this section, must calculate the facility reporting fee and submit such fee along with the associated inventory form to the Department on or before the deadline for submission of such form.

Section 4. Amend § 6311, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6311 Fee collection and management.

(a) The fees herein authorized shall be assessed and collected annually based on information required to be submitted under § 6306 of this title covering the previous calendar year.

(b) The fees herein authorized shall be appropriated to the State Emergency Response Commission through the Department primarily for the purpose of funding the local emergency planning committees and data collection and management activities related to this chapter. At the discretion of the State Emergency Response Commission, these fees may also be used to fund emergency response vehicles (including their purchase, as well as maintenance and repairs) and related equipment and supplies; and physical examinations and medical screenings for volunteer fire service members of decontamination teams. For the purposes of this section, the words "emergency

response vehicles" include but are not limited to vehicles such as decontamination units (both tow vehicle and trailer).

(c) The Department shall oversee the assessment and collection of the fees herein authorized. These fees shall be placed in a liquid, interest-bearing account to be selected by the Commission.

(d) Fee monies obtained under this chapter shall remain available for the purposes of this chapter and shall not be subject to reversion.

(e) All local emergency planning committees and state agencies to be funded under this chapter shall submit to the State Emergency Response Commission for review and approval each year a budget worksheet for the next fiscal year.

~~(f) All revenue collected under the authority of § 301(e) [42 U.S.C. § 11001] of Title III, Superfund Amendment and Reauthorization Act of 1986 (SARA), for the SARA III Program shall be distributed to the local emergency planning committees.~~

Section 5. Amend § 6313, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6313 Regulations.

(a) The Secretary may prescribe such regulations as may be necessary to carry out this chapter.

(b) Regulations prepared by the Secretary under this chapter shall be subject to review and approval by the State Emergency Response Commission prior to promulgation.

(c) Concerning the list of extremely hazardous substances and threshold planning quantities established under § 6303 of this title and the list of toxic chemicals established under § 6307 of this title, the lists shall be established and maintained consistent with the corresponding lists of chemicals established and maintained by the administrator under 42 U.S.C. Chapter 116 [42 U.S.C. § 11001 et seq.]. In establishing regulations under this chapter, consideration shall be given to maintaining consistency with federal regulations established by the administrator under 42 U.S.C. Chapter 116 [42 U.S.C. § 11001 et seq.]

(d) With advice and consent of the State Emergency Response Commission, the Secretary may establish additional exemptions or alternate threshold amounts for specific chemical substances or situations of chemical use or storage, provided the reporting burden or the concerns posed by such substances or situations do not justify reporting per the requirements specified in this chapter. With the advice and consent of the State Emergency Response Commission, the Secretary may also establish variances from the reporting requirements and procedures specified within this chapter, provided such variances are intended to promote more efficient implementation and do not unnecessarily jeopardize the purposes of this chapter.

(e) Except as provided in § 6304 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

Approved August 30, 2017