

## TITLE 8. EMERGENCY AND MILITARY AFFAIRS

## CHAPTER 4. ARIZONA EMERGENCY RESPONSE COMMISSION

ARTICLE 1. EMERGENCY PLANNING AND  
COMMUNITY RIGHT TO KNOW

*Article 1, consisting of Sections R8-4-101 through R8-4-110, made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).*

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ARTICLE 1. EMERGENCY PLANNING AND  
COMMUNITY RIGHT TO KNOW**R8-4-101. Definitions**

- A.** The definitions in A.R.S. § 26-341 apply to this Chapter.
- B.** In this Article, unless specified otherwise:
1. "Emergency planning district" means an area that the Commission designates to facilitate preparing and implementing an emergency response plan.
  2. "EPA" means the United States Environmental Protection Agency.
  3. "EPCRA" means the Emergency Planning and Community Right-to-Know Act of 1986, commonly known as SARA Title III.
  4. "FD" means local fire department or the fire district with jurisdiction for a particular facility.
  5. "Hazardous substance" means a substance on the list that appears at 40 CFR 302.4.
  6. "LEPC" means "Committee," as prescribed at A.R.S. § 26-341(2).
  7. "MSDS" means material safety data sheet and has the same meaning as prescribed at 40 CFR 370.02.
  8. "NIMS" means National Incident Management System.
  9. "Reportable release" means a release that is not excluded under 40 CFR 355.40.
  10. "TPQ" means threshold planning quantity and has the same meaning as prescribed at 40 CFR 355.20.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-102. General Provisions**

- A.** The Commission shall make all forms referenced in this Chapter available on its internet site.
- B.** The owner or operator of a facility that is required to submit information under this Article may submit the information electronically to the Commission and LEPC and to the FD if, as indicated on the Commission's web site, the FD has entered into an agreement with the Commission regarding electronic submission.
- C.** When the chair of an LEPC forwards to the Commission an item requiring action by the Commission before its next meeting, the Executive Director of the Commission shall respond to the LEPC on behalf of the Commission until the Commission takes action at its next meeting.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-103. Responsibilities of an LEPC**

- A.** Members of an LEPC shall fulfill the responsibilities listed at 42 U.S.C. 11001(c), October 17, 1986, which is incorporated by reference, contains no future editions or amendments, and is available from the Commission and the U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250.
- B.** In addition to the responsibilities under subsection (A), members of an LEPC shall:
1. Establish procedures for access to the Local Emergency Response Plan;
  2. Evaluate the resources needed to develop and implement the Local Emergency Response Plan and make recommendations to the County Board of Supervisors and the Commission regarding mechanisms to provide the resources needed;
  3. Ensure that newly appointed LEPC members participate in training provided by the Commission regarding the responsibilities of LEPC members; and
  4. Ensure that LEPC members are aware of and have the opportunity to attend Commission-sponsored meetings regarding matters related to emergency planning and preparedness.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-104. Emergency Planning and Preparedness**

- A.** If a facility is required to comply with 40 CFR 355.30, the owner or operator of the facility shall also comply with the emergency planning and preparedness requirements in this Section.
- B.** If a facility is designated by the Commission under A.R.S. § 26-347(B), the owner or operator of the facility shall comply with the emergency planning and preparedness requirements in this Section and the reporting requirements of R8-4-107.
- C.** No later than 60 days after a facility first becomes subject to the emergency planning and preparedness requirements of this Section, the owner or operator of the facility shall submit a facility emergency response plan according to A.R.S. § 26-347(D). The owner or operator of the facility may submit the facility emergency response plan by completing and submitting an Emergency Response Plan Questionnaire, which is available from the Commission.
- D.** The owner or operator of a facility that submits an Emergency Response Plan Questionnaire under subsection (C) may also submit a Hazard Analysis Worksheet for each extremely hazardous substance at the facility that equals or exceeds the TPQ.
- E.** On or before March 1 of each year, the owner or operator of a facility described in subsection (A) or (B) shall:
1. Review and determine whether the facility emergency response plan submitted under subsection (C) is still accurate and, if changes are needed to ensure that the facility emergency response plan is accurate, submit information regarding the relevant changes. If information regarding relevant changes to the facility emergency response plan is submitted, the owner or operator of the facility may revise and submit the Hazard Analysis Worksheet previously submitted under subsection (D); and
  2. Comply with R8-4-107(C).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-105. Local Emergency Response Plan**

- A. Within 12 months after the Commission designates a new emergency planning district and appoints members of an LEPC for the newly designated emergency planning district, the LEPC shall prepare an emergency response plan that complies with the requirements at A.R.S. § 26-345(E) and complies with NIMS.
- B. On or before December 31 of each year and when there are changed circumstances in the community or at a facility, an LEPC shall review and update the emergency response plan for its emergency planning district.
- C. An LEPC shall submit a copy of the emergency response plan prepared under subsection (A) or (B) to the Commission.
- D. Within 60 days after the Commission receives a copy of an emergency response plan under subsection (C), the Commission staff shall:
  1. Review the emergency response plan and make recommendations for revisions necessary to ensure that the emergency response plan complies with law and coordinates with the emergency response plans of adjoining emergency planning districts; and
  2. Return the emergency response plan and recommendations to the LEPC.
- E. An LEPC shall ensure that the emergency response plan prepared under subsection (B) and reviewed and amended under subsection (D) is incorporated into the county's emergency operations plan in accordance with county procedures.
- F. At least biennially and after providing at least 30 days notice to the Commission, an LEPC shall conduct an exercise of its emergency response plan.
- G. On or before December 31 of each year, an LEPC shall survey its emergency planning district to determine how many copies of the U.S. Department of Transportation Emergency Response Guidebook are needed and forward the information regarding the number of copies needed to the Commission.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-106. Reportable Release Notification**

The owner or operator of a facility at which a reportable release occurs shall:

1. Comply with the notification requirements of A.R.S. § 26-348(A);
2. Submit the written follow-up emergency notice required under A.R.S. § 26-348(B); and
3. Update the notice provided under subsection (2) as required under A.R.S. § 26-348(C).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-107. Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting**

- A. The owner or operator of a facility shall comply with the extremely hazardous substance and hazardous chemical reporting requirements of 40 CFR 370, Subpart B, July 1, 2007, which is incorporated by this reference, contains no later amendments or editions, and is available from the Commission and the U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250.

- B. As required by A.R.S. § 26-350, an owner or operator described in subsection (A) shall submit a Tier Two Emergency and Hazardous Chemical Inventory Form, using a form available from the Commission, by March 1 of each year. All facilities subject to this reporting requirement shall be subject to the Tier II Emergency and Hazardous Chemical Inventory Reporting fee schedule:
  1. Each owner or operator of a facility required to file a hazardous chemical inventory report(s) (Tier II Reports) under the provisions of 42 U.S.C. § 11022 will be assessed a report filing fee of seventy-five dollars (\$75.00) for the first required facility report and an additional fee of twenty dollars (\$20.00) for each additional required facility report up to a maximum limit of five hundred dollars (\$500) per annual reporting period.
  2. Owners or operators of facilities meeting the following conditions are exempt from the reporting fee(s):
    - a. Any business or other outlet that primarily reports or sells gasoline, diesel and other motor fuel only at retail to the public.
    - b. Any business or other outlet that only files a Tier II report to claim lead acid batteries.
    - c. Any business or other outlet that only files a Tier II report to claim diesel or gasoline.
    - d. Any business or other outlet that resides on tribal lands or a tribal Nation and must report to a Tribal Emergency Response Commission (TERC) or Chemical-Tribal Emergency Response Commission (C-TERC).
- C. If a facility ceases to meet the minimum reporting thresholds of 40 CFR 370, Subpart B, for EHS and hazardous chemical reporting with regard to a specific EHS or hazardous chemical, the owner or operator of the facility may submit a notice to the Commission, LEPC, and FD indicating that the specific EHS or hazardous chemical is no longer present in a quantity that meets the minimum reporting threshold.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 20 A.A.R. 2524, effective October 17, 2014 (Supp. 14-3).

**R8-4-108. Compliance Procedures**

- A. The Commission shall make information regarding the EPCRA available to the owner or operator of a facility.
- B. The owner or operator of a facility may obtain guidance, but not legal advice, regarding complying with the EPCRA by contacting the Commission.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-109. Community Right-to-know Procedures**

- A. To obtain information regarding a specific hazardous chemical or extremely hazardous substance at a specific facility, local emergency response plan, or notice regarding a reportable release, a person shall submit a written request to the Commission or LEPC. If a request is submitted to the Commission or LEPC, the LEPC may forward a copy of the request to the Commission so Commission staff can coordinate a response to the request. To obtain a copy of a Form R relating to toxic chemical releases, a person shall submit a written request to the Commission.
- B. As required by 42 U.S.C. 11022, the Commission or LEPC shall respond to a written request for information. The response shall advise the person making the request of one of the following:

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1. The time and location at which the person may inspect and copy the requested information,
  2. That additional information is needed to process the request,
  3. That the requested information is not available but the Commission or LEPC will ask the owner or operator of the facility to provide the information, or
  4. That the request is denied because:
    - a. The requested information does not exist,
    - b. The owner or operator of the facility is not required to provide the information,
    - c. The Commission or LEPC determined that disclosing the information will impair its ability to protect public health or safety and the public interest in non-disclosure outweighs the public interest in disclosure, or
    - d. The information is exempt by law from disclosure.
- C.** Before releasing information, the Commission or LEPC shall advise the owner or operator of a facility of the request for information regarding the facility.
- D.** Under A.R.S. § 39-121, the Commission or LEPC shall charge the person making a request under this Section the cost of reproducing the information requested. The Commission shall deposit the funds received under this subsection in accordance with A.R.S. § 26-343(G).
- Historical Note**
- New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).
- R8-4-110. Grants**
- A.** On or before September 1 of each year, the Commission shall provide notice that is consistent with A.R.S. § 41-2702 to all LEPCs regarding grants that are available from the Commission.
- B.** To receive funds that are awarded on a non-competitive basis, an LEPC shall submit a "Certification and Request for Funding" form in which the LEPC certifies that it:
1. Is in compliance with all applicable law, including NIMS;
  2. Will use the funds in the manner intended;
  3. Will keep separate funds from the Emergency Response Fund and funds from other sources; and
  4. Will submit all required reports.
- C.** To receive grant funds that are awarded on a competitive basis, an LEPC shall submit to the Commission a proposal that specifies:
1. The goal that the LEPC intends to accomplish with any grant funds received,
  2. Where the grant funds will be spent,
  3. The amount of grant funds needed to accomplish the goal,
  4. The time needed to accomplish the goal, and
  5. Other information that the Commission requests to assist the Commission to evaluate the grant proposal.
- D.** On behalf of the Commission, Commission staff shall meet at least annually with members of the LEPCs to establish the criteria used to evaluate a grant proposal. Commission staff, on behalf of the Commission, shall evaluate each proposal that is timely received using the criteria established. The Commission shall ensure that the criteria used include consideration of both the qualification of and need for an LEPC to receive a grant.
1. The criteria regarding qualification of an LEPC to receive a grant may include:
    - a. The extent to which the LEPC fulfilled the responsibilities listed in R8-4-103;
    - b. Whether the LEPC complied with all provisions of R4-8-104;
    - c. Whether the LEPC submitted all reports required for grant funds previously received;
    - d. Whether previously received grant funds were used in a manner that achieved the goal established;
    - e. Attendance by LEPC members at Commission-sponsored meetings; and
    - f. The number of training sessions provided by LEPC members to emergency responders in the emergency planning district; and
  2. The criteria regarding need for an LEPC to receive a grant may include:
    - a. The number of facilities required to report to the LEPC under this Chapter;
    - b. The population represented by the LEPC; and
    - c. The number of reportable releases during the past year in the area represented by the LEPC.
- E.** Within 60 days after the grant-proposal deadline specified in the notice of grant availability, the Commission shall provide written notice to each LEPC that applies for grant funds regarding whether grant funds will be awarded and if so, the amount awarded.
- F.** An LEPC that receives grant funds shall submit progress reports to the Commission on dates prescribed by the Commission. The LEPC shall include in each progress report a summary of the work done to accomplish the goal stated in the grant proposal and a detailed accounting of the expended and remaining grant funds.
- Historical Note**
- New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).