

**PART XIII. WORKER AND COMMUNITY  
RIGHT-TO-KNOW ACT**

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**Authority**

The provisions of this Part XIII issued under section 17 of the act of October 5, 1984 (P. L. 734, No. 159) (35 P. S. § 7317).

**CHAPTER 301. JURISDICTION, DEFINITIONS, EXEMPTIONS AND ADMINISTRATIVE MATTERS**

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**Source**

The provisions of this Chapter 301 adopted August 1, 1986, effective August 2, 1986, 16 Pa.B. 2909, unless otherwise noted.

**§ 301.1. Purpose and scope.**

This chapter implements the jurisdictional and other requirements under sections 18 and 19 of the act (35 P. S. §§ 7318 and 7319). In addition, this chapter sets forth the effective dates of this part under section 22 of the act (35 P. S. § 7322).

**§ 301.2. Definitions.**

The following words and terms when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Worker and Community Right-to-Know Act (35 P. S. §§ 7301—7320).

*Article*—A manufactured item which is formed to a specific shape or design during manufacture, which has end use functions dependent in whole or in part upon its shape or design during end use and which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

*Chemical*—An element, substance, chemical compound or a mixture of elements, substances or compounds. The term does not include an article, a food, drug or cosmetic as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. § 321). The term does not include cosmetics, tobacco or products which are primarily intended for sale on the retail market to the general public and are sealed in the packages to be used therewith.

*Chemical Abstracts Service number*—The unique identification number assigned by the Chemical Abstracts Service to chemicals.

*Chemical identification sheet (CIS)*—A written document, prepared under the act, which contains, in the case of a hazardous mixture, the identity by chemical name, common name and Chemical Abstracts Service number; special hazardous substances comprising 0.01% or more of the mixture and hazardous substances comprising 1.0% or more of the mixture; and other substances comprising 3.0% more of the mixture.

*Chemical name*—The scientific designation of a chemical under the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature.

*Common name*—A designation or identification other than a chemical name or trade name, by which a substance is generally known, such as a nonsystematic scientific name, which clearly identifies a single chemical or mixture and which is unique to that specific chemical or mixture.

*Consumer product*—A consumer product shall be defined in accordance with the Consumer Product Safety Act (15 U.S.C.A. §§ 2051—2083) and Federal Hazardous Substances Act (15 U.S.C.A. §§ 1261—1276) when subject to a consumer product safety standard or labeling requirement of those acts or regulations issued under those acts by the Consumer Product Safety Commission.

*Container*—A receptacle used to hold a liquid, solid or gaseous substance including, but not limited to, bottles, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats and stationary tanks. The term does not include receptacles into which substances are transferred by the employe from labeled containers and which are intended only for the immediate use by the employe who

performs the transfer, or receptacles which are primarily designed to be sold on the retail market for use by the general public.

*Department*—The Department of Labor and Industry of the Commonwealth.

*Director*—The Director of the Worker and Community Right-to-Know program designated by the Secretary or the Director's designee.

*Employee*—A person currently working for an employer, except domestic or casual laborers employed at the employer's place of residence. A former employee is considered an employee, except that the former employee's rights are subject to a request made by the former employee and received by the employer.

*Employee representative*—An individual or organization authorized by an employee to exercise the right to request information under the act. The term includes a recognized or certified collective bargaining agent for an employee without regard to individual employee authorization.

*Employer*—An individual, partnership, corporation or association doing business in this Commonwealth. The term includes the Commonwealth, its political subdivisions—including school districts—and an officer, board, commission, agency, authority or other instrumentality thereof.

*Environmental hazard*—A substance, emission or discharge determined by the Department to be a hazardous substance and which, because of its particular or extreme properties, poses a danger if released into the environment.

*Exposure*—A situation arising from a workplace operation where an employee may ingest, inhale, absorb through the skin or eyes or otherwise come into contact with a chemical or mixture.

*Hazardous mixture*—A mixture that contains one or more hazardous substances, in a concentration of 1.0% or greater in the mixture or a mixture that contains one or more special hazardous substances or environmental hazards in concentrations of 0.01% or greater in the mixture. The term includes a new mixture resulting from the combination of a special hazardous mixture and one or more chemicals or mixtures.

*Hazardous substance*—A chemical or mixture defined under section 3 of the act (35 P. S. § 7303). The term includes hazardous mixture. The term does not include substances naturally existing and not created as a result of, or in connection with, a manufacturing process, such as animal manures and coal.

*Hazardous substance fact sheet (HSFS)*—A written document prepared by the Department for the purpose of transmitting information about a hazardous substance to employers, employees or members of the general public.

*Hazard warning*—Words, pictures, symbols or a combination of these appearing on a label which conveys information regarding actions or cautions to be taken with regard to the associated hazardous substance.

*Health professional*—A physician, nurse, industrial hygienist, toxicologist or epidemiologist providing medical, occupational health or environmental health services.

*Importer*—The first business within the customs territory of the United States which handles chemicals produced in other countries and intended for sale and distribution to purchasers within the United States.

*Label*—A sign, emblem, sticker or marker affixed to or stenciled into a container listing the information required under section 6 of the act (35 P. S. § 7306) and Chapter 309 (relating to labeling and substances).

*MSDS*—Material Safety Data Sheet.

*Manufacturer*—An individual, partnership, corporation, association or other person who provides, extracts, produces, uses or otherwise makes chemicals for sale or distribution having a Standard Industrial Classification as designated in the *Standard Industrial Classification Manual* prepared by the Federal Office of Management and Budget within major groups 20 through 39, inclusive.

*Material Safety Data Sheet (MSDS)*—A written document prepared by a manufacturer, supplier or importer in conformity with section 4 of the act (35 P. S. § 7304) for the purpose of transmitting information concerning a chemical.

*Mixture*—A combination of chemicals not involving a chemical reaction.

*NIOSH Registry of Toxic Effects of Chemical Substances*—The online data base of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances.

*OSHA*—The Federal Occupational Safety and Health Administration.

*Private label*—A unique sign, emblem, sticker or marker identifying a product or trade name and accompanying information under which a supplier markets a product manufactured by another manufacturer. Private labels are generally characterized by the following:

- (i) The name of the private label product is different from that used by the manufacturer.
- (ii) The name, address and telephone number of the supplier appear on the label instead of the name, address and telephone number of the manufacturer.
- (iii) The directions for use, hazard warnings and precautionary information are based on the manufacturer's information.

*Research and development laboratory*—A specially designated area used primarily for research, development, teaching or testing activity, and not primarily involved in the production of goods for commercial sale, in which chemicals are used by or under the direct supervision of a technically qualified person.

*Sealed package*—A portable container into which the manufacturer, importer or supplier has placed chemicals, and which is sealed by the manufacturer, importer or supplier for transport to another location, and which is intended to remain sealed until reaching its final destination. The term includes containers used to transport hazardous wastes under the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986) or the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980 (26 U.S.C.A. §§ 4611—4682) and (42 U.S.C.A. §§ 6911, 6911e and 9601—9657).

*Secretary*—The Secretary of the Department.

*Special hazardous substance*—A hazardous substance so designated by the Department because its particular toxicity, tumorigenicity, mutagenicity, reproductive toxicity, flammability, explosiveness, corrosivity or reactivity poses a special hazard to health and safety.

*Supplier*—An individual, partnership, corporation, association or other person inside or outside of this Commonwealth, who manufactures, supplies, imports or distributes a chemical for sale, distribution or use within this Commonwealth.

*Technically qualified person*—A person who because of education, training or experience understands the risk associated with a hazardous substance or mixture containing a hazardous substance being handled by an employe under his supervision or guidance.

*Trade name*—A designation or identification such as a code name or number, or a brand name, used by an employer or supplier to identify a chemical other than by its chemical or common name.

*Trade secret*—A formula, plan, pattern, process, production data, information or compilation of information, including chemical or common name, which is known only to an employer and a limited number of other individuals, and which is used in the fabrication and production or development of a product, process or service and which gives the employer possessing it a competitive advantage over businesses who do not possess it, or the secrecy of which is certified by an appropriate official of the Federal Government as necessary for national defense purposes.

*Workplace*—A building or work area or contiguous group of buildings or work areas at one geographical location composing a plant site in this Commonwealth used by the employer on a permanent or temporary basis to conduct business.

*Work area*—A room, section of a room or defined space within a workplace where workers are based for the regular performance of their duties.

#### Source

The provisions of this § 301.2 amended September 15, 1995, effective September 16, 1995, 25 Pa.B. 3851. Immediately preceding text appears at serial pages (109954) to (109956) and (126527) to (126528).

#### Cross References

This section cited in 34 Pa. Code § 301.3 (relating to jurisdiction/exemptions).

**§ 301.3. Jurisdiction/exemptions.**

(a) *Information about hazardous substances required.* Employers and chemical suppliers doing business in this Commonwealth shall provide information about the identity and hazards of hazardous substances used in the workplace, except as provided in this chapter.

(b) *Exemptions.*

(1) Manufacturers as defined in § 301.2 (relating to definitions) and private sector employers regulated by OSHA's Hazard Communication Standard at 29 CFR 1910.1200 (relating to hazard communication) with respect to the communication of information to their employes about hazardous chemicals found in their workplace are exempt from the following:

<i>Act</i>	<i>Regulations</i>	<i>Item</i>
Section 3 (35 P. S. § 7303)	§§ 305.2(b), 305.3(b) (relating to maintenance and disclosure of Hazardous Substance Survey Forms; and maintenance and disclosure of Environmental Hazard Survey Forms)	Providing Hazardous Substance Survey Forms and Environmental Hazard Survey Forms to Employees
Section 4 (35 P. S. § 7304)	Chapter 307 (relating to Material Safety Data Sheet (MSDS))	Providing MSDSs to employes
Section 7(a)(1) (35 P. S. § 7307(a)(1))	Chapter 311 (relating to posting notices and other information)	Posting information in the workplace
Section 6 (35 P. S. § 7306)	Chapter 309 (relating to labeling of substances)	Labeling containers and pipelines in the workplace
Section 8 (35 P. S. § 7308)	Chapter 313 (relating to employer educational and training program)	Training employes

(2) An article is exempt from the act and this part under section 18(a)(1) of the act (35 P. S. § 7318(a)(1)).

(3) A product intended for personal consumption by employes in the workplace is exempt from the act and this part under section 18(a)(2) of the act (35 P. S. § 7318(a)(2)).

(4) A consumer product that is packaged in a container which is primarily designed for distribution to, and use by, the general public is exempt from the act under section 18(a)(3) of the act (35 P. S. § 7318(a)(3)).

(5) A product primarily intended for sale on the retail market to the general public and sealed in a package to be used therein is exempt from the act under section 2 of the act (35 P. S. § 7302).

(6) Foods, drugs and cosmetics as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C.A. § 321); 21 CFR Part 1 (relating to general regulations for the enforcement of the Federal Food, Drug and Cosmetic Act and the Fair Packaging and Labeling Act); section 18(a)(4) of the act (35 P. S. § 7318(a)(4)) and other cosmetics, under the definition of chemical in section 2 of the act (35 P. S. § 7302) are exempt.

(7) Tobacco, as defined in section 2 of the act (35 P. S. § 7302) and under the Federal Cigarette Labeling and Advertising Act (15 U.S.C.A. §§ 1331—1341) is exempt.

(c) *Special applications.*

(1) *Research and development laboratories.*

(i) A research and development laboratory is not required to do the following:

(A) Complete a Hazardous Substance Survey Form under section 3 of the act (35 P. S. § 7303) and § 303.1 (relating to Hazardous Substance Survey Forms).

(B) Complete an Environmental Substance Survey Form under section 3 of the act (35 P. S. § 7303) and § 303.2 (relating to Environmental Hazard Survey Forms).

(C) Conduct onsite testing under section 3 of the act (35 P. S. § 7303) and § 323.6 (relating to onsite testing of environmental hazards).

(D) Prepare MSDS under section 4 of the act (35 P. S. § 7304) and Chapter 307 (relating to Material Safety Data Sheet (MSDS)).

(E) Disclose new information regarding a hazardous substance under section 5(b) of the act (35 P. S. § 7305(b)) and § 307.13 (relating to new information).

(F) Post lists of hazardous substances and special hazardous substances found in the workplace, and environmental hazards emitted or discharged therefrom under section 7(a)(1) of the act (35 P. S. § 7307(a)(1)) and Chapter 311.

(G) Label containers and pipelines under section 6 of the act (35 P. S. § 7306) and Chapter 309.

(H) Provide public access to information under section 5(g) of the act (35 P. S. § 7305(g)) and § 305.6 (relating to public access).

(I) Develop new MSDSs for new or experimental chemicals created in the laboratory under section 18(b) of the act (35 P. S. § 7318(b)) and § 307.8 (relating to responsibility for preparing MSDSs).

(ii) A research and development laboratory shall make available MSDSs for chemicals otherwise acquired from manufacturers, suppliers and importers under section 18(b) of the act (35 P. S. § 7318(b)).

(2) *Sealed packages.*

(i) A sealed package handled by an employer which stores, warehouses or transports sealed packages and which is not the manufacturer, supplier or

importer of the chemical contained in the sealed package is not required to comply with subparagraph (ii) with respect to the sealed package and the chemicals it contains if:

(A) The package remains sealed while in the employer's possession and control. A sealed package may be opened to examine the contents for emergency or safety reasons and by Federal authorities.

(B) The employer transfers possession and control of the sealed package to another person within 20 days of the employer's receipt.

(C) An additional 10 day grace period is permitted for unusual circumstances. Persistent use of the 10 day extension may be deemed a violation of this part by the Department.

(ii) If the conditions in subparagraph (i) are met, the following exemptions apply:

(A) The contents of the packages need not be considered when completing a Hazardous Substance Survey Form under section 3(e) of the act (35 P. S. § 7303(e)) and § 303.1.

(B) The contents of the packages need not be considered when completing an Environmental Hazard Survey Form under section 3(g) of the act (35 P. S. § 7303(g)) and § 303.2.

(C) The contents of the packages need not be considered when completing an MSDS under sections 4(b) and 5(e) of the act (35 P. S. §§ 7304(b) and 7305(e)) and Chapter 307.

(D) Labeling the sealed package under section 6 of the act (35 P. S. § 7306) and Chapter 309 is not required.

(E) Posting notices regarding the package under section 7 of the act (35 P. S. § 7307) and Chapter 311 is not required.

(F) Training employes regarding the contents of the sealed packages under section 8 of the act (35 P. S. § 7308) and Chapter 313 is not required.

(G) Disclosing trade secrets contained in the sealed package under section 11 of the act (35 P. S. § 7311) and Chapter 317 (relating to trade secrets) is not required.

(H) Conducting onsite testing under section 3(h) of the act (35 P. S. § 7303(h)) and § 323.6 (relating to onsite testing of environmental hazards) is not required.

(3) *Employers without employes.* An employer is not required to comply with the following if the employer does not have present employes:

(i) Completing a Hazardous Substance Survey Form under section 3(e) of the act (35 P. S. § 7303(e)) and § 303.1.

(ii) Making readily available MSDSs for hazardous substances or hazardous mixtures available to employes under sections 4(b) and 5(e) of the act (35 P. S. §§ 7304(b) and 7305(e)) and Chapter 307.

(iii) Labeling containers of a hazardous substance, hazardous mixture, single chemical and mixture under sections 6(a)(1)—(5) and (6)(b)—(g) of the act (35 P. S. § 7306(a)(1)—(6) and (b)—(g)), and §§ 309.1(b)(2), 309.2(a)(i)—(iv), 309.3—309.6(a), (b), (e) and (f) (relating to labeling; information required on label; common name usage; hazard warning; pipelines; and general conditions applying to labels).

(iv) Posting notices under section 7 of the act (35 P. S. § 7307) and Chapter 311.

(v) Providing education and training programs under section 8 of the act (35 P. S. § 7308) and Chapter 313.

(d) *Other statutes.*

(1) *Construction with Federal statutes.* This part shall be read in conjunction with Federal statutes or regulations providing for the identification, labeling or providing of information concerning hazardous substances, and is intended to supplement Federal regulations in the interests of protecting the health and safety of citizens of the Commonwealth.

(2) *Similar laws.* Evidence of compliance with other statutes that meet the requirements of the act constitutes compliance with similar provisions of the act and this part.

#### Source

The provisions of this § 301.3 adopted August 1, 1986, effective August 2, 1986, 16 Pa.B. 2909; amended March 25, 1988, effective in accordance with § 301.4, 18 Pa.B. 1471. Immediately preceding text appears at serial pages (109958) to (109962).

#### Cross References

This section cited in 34 Pa. Code § 301.3 (relating to jurisdiction/exemptions).

### § 301.4. Effective dates.

(a) The following sections take effect August 3, 1987:

(1) The obligation to prepare MSDSs under section 4(b) of the act (35 P. S. § 7304(b)) and Chapter 307 (relating to Material Safety Data Sheet (MSDS)).

(2) The obligation of an employer to furnish, upon the request of an employe or employe representative, an MSDS for a hazardous substance or hazardous mixture present in the employer's workplaces under section 5(c)(2) of the act (35 P. S. § 7305(c)(2)) and Chapter 307.

(3) The obligation of an employer to furnish, upon the written request of an employe or employe representative, a copy of the requested MSDS under section 5(d) of the act (35 P. S. § 7305(d)) and Chapter 307.

(4) The obligation of an employer to ensure that a container, including pipelines containing a hazardous substance or hazardous mixture, is labeled, tagged or marked under section 6(a)(1) and (2) of the act (35 P. S. § 7306(a)(1) and (2)) and § 309.2(a)(1) and (2) (relating to information required on label).

(b) The following sections take effect August 2, 1988:

(1) The obligation of an employer to ensure that a container, including pipelines, containing a single chemical is labeled, tagged or marked under section 6(a)(3) of the act (35 P. S. § 7306(a)(3)) and § 309.2(a)(3).

(2) The obligation of an employer to ensure that a container, including pipelines, containing a mixture is labeled, tagged or marked under section 6(a)(4) of the act and (35 P. S. § 7306(a)(4)) and § 309.2(a)(4).

(c) The remaining provisions of this part shall take effect December 1, 1986.

### § 301.5. Construction of regulations.

(a) *No release from liability.* Nothing in this part relieves an employer or supplier from liability with regard to the health and safety of an employee or other persons exposed to substances, nor does it relieve an employer or supplier from a duty or responsibility under other statutes.

(b) *Local ordinances.* This part preempts and supersedes a local ordinance or rule concerning the subject matter of this part.

### § 301.6. Retention of materials.

The Department will maintain a file of complete Hazardous Substance Surveys and Environmental Hazard Survey Forms for 30 years. The Department will also retain at least one MSDS for a hazardous substance and hazardous mixture, together with revisions thereof.

### § 301.7. Risk to public health.

(a) If the Department determines that a hazardous substance or other chemical poses a potential health risk to the general public in an area surrounding the workplace, it will inform the nearest public health agency, hospital and fire company, and will submit to them copies of a relevant MSDS that it has in its possession.

(b) The criteria used by the Department in determining whether a hazardous substance or other chemical poses a potential health risk to the public include, but are not limited to the following:

(1) The nature and quantity of the hazardous substance or chemical present.

(2) The number of people who are being or may be exposed to the substances.

(3) The nature of the area surrounding the workplace.

(4) The nature, degree and type of risk posed by the substances to the general public.

(c) The Department will use the most effective method of informing the nearest public health agency, hospital and fire company of the potential risk of public health posed by a hazardous substance or other chemical.

**§ 301.8. Computation of time.**

Time frames referred to in this part are based on calendar days, 1 Pa.C.S. § 1908 (relating to computation of time) and FED. R. CIV. P. 6(a) (28 U.S.C.A. (1986)) providing the computation of days.

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