

2021 Handbook of Florida Water Regulation: Emergency Planning and Community Right-to-Know Act [Title III of the Superfund Amendments and Reauthorization Act]¹

Michael T. Olexa, Tatiana Borisova, and Jana Caracciolo²

Preface

This handbook is designed to provide an accurate, current, and authoritative summary of the principal federal and state (Florida) laws that directly or indirectly relate to agriculture. This handbook provides a basic overview of the many rights and responsibilities that farmers and farmland owners have under both federal and state laws as well as the appropriate contact information to obtain more detailed information. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this publication could become outdated at any time. Several details of cited laws are also left out due to space limitations. This handbook is provided as an educational text for those interested in water use and water resource issues in Florida.

This handbook is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and the information contained herein should not be regarded as a substitute for professional advice. This handbook is not all inclusive in providing information to achieve compliance with the federal and

state laws and regulations governing water protection. For these reasons, the use of these materials by any person constitutes an agreement to hold harmless the authors, the UF/IFAS Center for Agricultural and Natural Resource Law, and UF/IFAS Extension for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this handbook. Note: UF/IFAS is the acronym for University of Florida, Institute of Food and Agricultural Sciences.

EPCRA Overview

The federal Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act (SARA), was passed in 1986 as part of SARA. EPCRA was passed in response to concerns about the environmental and safety hazards posed by the storage and handling of toxic chemicals, hazardous chemicals, and extremely hazardous substances.

EPCRA establishes requirements for federal, state, and local governments; Native American tribes; and chemical facilities regarding emergency planning for releases/spills of

1. This document is FE586, one of a series of the Food and Resource Economics Department, UF/IFAS Extension. Original publication date October 1998. Revised June 2017 and April 2021. Visit the EDIS website at <https://edis.ifas.ufl.edu> for the currently supported version of this publication.
2. Michael T. Olexa, professor, Food and Resource Economics Department, and director, UF/IFAS Center for Agricultural and Natural Resource Law, and member of The Florida Bar; Tatiana Borisova, associate professor, Food and Resource Economics Department; and Jana Caracciolo, student, Levin College of Law; UF/IFAS Extension, Gainesville, FL 32611.

The Institute of Food and Agricultural Sciences (IFAS) is an Equal Opportunity Institution authorized to provide research, educational information and other services only to individuals and institutions that function with non-discrimination with respect to race, creed, color, religion, age, disability, sex, sexual orientation, marital status, national origin, political opinions or affiliations. For more information on obtaining other UF/IFAS Extension publications, contact your county's UF/IFAS Extension office. U.S. Department of Agriculture, UF/IFAS Extension Service, University of Florida, IFAS, Florida A & M University Cooperative Extension Program, and Boards of County Commissioners Cooperating. Nick T. Place, dean for UF/IFAS Extension.

toxic chemicals, hazardous chemicals, or extremely hazardous substances. EPCRA also establishes requirements regarding community right-to-know reporting on toxic chemicals, hazardous chemicals, and extremely hazardous substances. EPCRA's right-to-know provisions are designed **to help increase the public's knowledge and access to information on chemicals at local facilities, their uses, and releases into the environment.** Using this information, states, communities, and chemical facilities can improve chemical safety, and protect public health, safety, and the environment from chemical hazards.

While EPCRA establishes general requirements for states to follow, it mandates that the states themselves must set the specific categories and requirements by which chemical facilities in those states will be regulated under EPCRA, by enacting state versions of EPCRA. These versions supplement EPCRA and can be even more stringent. Landowners should consult their state's version of EPCRA. Florida's version of EPCRA is known as the Florida Emergency Planning and Community Right-to-Know Act (FEPCRA).

Who enforces EPCRA?

While the United States Environmental Protection Agency (EPA) is the primary enforcer of the EPCRA, state governors and/or State Emergency Response Commissions (SERC) are the primary enforcers of their own state's version of EPCRA. In Florida, two agencies—the Florida State Hazardous Materials Emergency Response Commission (FSHMERC) and the Florida Division of Emergency Management (FDEM)—enforce FEPCRA. Note, however, that according to FEPCRA, FSHMERC and FDEM cannot bring an action against a violator of a FEPCRA requirement if EPA has brought and is pursuing an administrative order or civil penalty to enforce or is imposing a civil penalty for violating the same requirement under EPCRA.

What facilities are covered by EPCRA?

EPCRA regulates facilities that produce and/or store extremely hazardous substances and toxic or hazardous chemicals above the threshold amounts as listed and determined by EPA. These facilities must notify the appropriate state officials, identified by EPCRA, that they are covered by EPCRA. For a complete list of chemicals listed as extremely hazardous substances, toxic chemicals, or hazardous chemicals and their threshold storage amounts, please consult EPA (<https://www.gpo.gov/fdsys/pkg/CFR-2014-title40-vol28/pdf/CFR-2014-title40-vol28-part302.pdf>).

What does EPCRA require?

The federal EPCRA has five major provisions:

1. Emergency planning
2. Submission of Material Safety Data Sheets (accompanied by items 3, 4, and 5)
3. Hazardous chemical inventory
4. Toxic chemical release inventory
5. Emergency release notification

First, under EPCRA's emergency planning provision, the governor of each state has appointed a **state emergency response commission** (SERC) to implement the EPCRA provisions within its state. SERCs may be made up of one or more existing state-supported or appointed emergency response organizations, and to the extent possible, should be comprised of people with expertise in emergency response. The SERC appoints members to a **local emergency planning committee** (LEPC) in each emergency planning district. LEPC membership must include local officials (i.e., police, fire, civil defense, public health, transportation, and environmental professionals), representatives of facilities subject to the emergency planning requirements, and the media. It is the responsibility of each LEPC to develop its district's emergency response plan, review the plan annually along with the SERC and regional response teams, and provide information about the emergency response plan in the community to citizens in the district.

For a map of Florida's LEPC, please visit the Florida Division of Emergency Management's website: <https://www.floridadisaster.org/globalassets/maps/lepcmap.pdf>.

Required elements of a district emergency response plan include the following:

- Identify facilities and transportation routes of extremely hazardous substances
- Describe emergency response procedures, on and off site
- Designate a community emergency coordinator and facility coordinator(s) to implement the plan
- Describe how to determine the probable affected area and population by releases
- Outline evacuation plans

For the complete list of requirements, please consult EPA.

Second, EPCRA also imposes several **reporting requirements on the owners or operators of the facilities covered** by EPCRA. Owners or operators of these facilities must submit Material Safety Data Sheets (for each chemical), a hazardous chemical inventory form, and a toxic chemical release inventory form of all the extremely hazardous substances and toxic or hazardous chemicals that the facilities have produced and are storing to each of the following:

- The appropriate LEPC
- The SERC
- The fire department with jurisdiction over the facility

For a complete list of what should be included in each of these reports, please consult EPA, FSHMERC, or FDEM.

Third, if there is a release/spill of one pound or more of any extremely hazardous substance or toxic or hazardous chemical at a facility, the owners or operators of that facility must provide an **emergency notification** to the community emergency coordinator of the LEPC of the district in which the facility is located. If the release/spill occurred during transportation or storage incident to transportation, the emergency notification requirement will be satisfied by dialing 911.

The emergency notification must contain the following:

- The chemical name of any substance released
- An indication of whether the substance is extremely hazardous
- An estimate of the quantity released into the environment
- The time and duration of the release
- Whether the release occurred into air, water, and/or land
- Any known or anticipated acute or chronic health risks associated with the emergency, and where necessary, advice regarding medical attention for exposed individuals
- Proper precautions, such as evacuation or sheltering in place
- Name and telephone number of contact person

A written follow-up notice must be submitted to SERC and LEPC as soon as practicable after the release. The follow-up notice must update information included in the initial notice and provide information on actual response actions taken and advice regarding medical attention necessary for citizens exposed.

What does FEPCRA require?

In Florida, FEPCRA requires that these reporting requirements apply to facilities in both the manufacturing and the non-manufacturing sectors in the state and to the governmental bodies of Florida.

It also requires that the owners or operators of facilities in Florida that are covered by EPCRA must pay several fees, including an annual registration fee, to FSHMERC. The registration fee ranges from \$25 to \$2,000, based on the number of employees employed in Florida at facilities under common ownership or control of the owners or operators (see the *How-to-Comply Manual* at <https://www.floridadisaster.org/globalassets/dem/response/technological-hazards/epcra/florida-how-to-comply-manual--feb2022.pdf>).

Owners or operators of facilities that are required under EPCRA to notify FSHMERC must also pay a one-time filing fee of \$50 per facility. Owners or operators of facilities that are required under EPCRA to submit a Toxic Chemical Release Form must pay an annual reporting fee of up to \$150. For a complete list of the fees required under FEPCRA, please consult FSHMERC or FDEM. All fees required by FEPCRA are used to support and maintain the FEPCRA institutions across Florida.

What are the penalties under EPCRA?

First, an owner or operator of a facility who fails to notify the appropriate state officials (identified by EPCRA) that the facility is covered by EPCRA can be assessed by EPA with a civil penalty of up to \$25,000 for each day that the violation occurs or continues.

Second, any person who knowingly and willfully fails to provide emergency notification of a release can face a fine of up to \$25,000 and/or a criminal penalty of up to two years' imprisonment. In the case of a subsequent conviction, the violator can face a fine of up to \$50,000 and/or a criminal penalty of up to five years' imprisonment.

Note: A civil penalty for violating the requirements of an emergency notification cannot be imposed without notice to the violator and the opportunity for a hearing. In addition, EPCRA provides for limited citizen lawsuits against violators of EPCRA.

What are the penalties under FEPCRA?

First, in Florida, any owner or operator of a facility, an employer, or any other person who knowingly or recklessly provides false written information to be provided pursuant to EPCRA or FEPCRA to FSHMERC, FDEM, or a fire

department is liable for a civil penalty of \$5,000 for each item of false information submitted.

Second, any person who knowingly and willfully provides false information or causes such information to be provided, pursuant to EPCRA or FEPCRA to FSHMERC, FDEM, or a fire department, in writing, with the intent to mislead FSHMERC, FDEM, or a fire department, will be guilty of a third-degree felony punishable by a criminal penalty of up to five years' imprisonment and/or a fine of \$5,000.

Note: Misdemeanors are crimes that are punishable by imprisonment of one year or less, and felonies are crimes that are punishable by imprisonment of more than one year. Misdemeanors and felonies are further classified by degrees according to the level of severity, with first degree being the most serious crimes.

Third, FEPCRA states that any provision of EPCRA that creates a federal cause of action will also create a corresponding cause of action under Florida state law, with jurisdiction in the circuit courts. Furthermore, any provision of EPCRA that imposes or authorizes EPA to impose a civil penalty will also impose or authorize the imposition of a civil penalty by FDEM.

As mentioned above, it is important to remember that according to FEPCRA, an action cannot be brought against a violator of a requirement of FEPCRA if EPA has brought and is pursuing an administrative order or civil penalty to enforce, or imposing a civil penalty for a violation of, the same requirement under EPCRA.

Sources

42 United States Code, Sections 11001 to 11050

Chapter 252, Florida Statutes, Sections 252.81 to 252.905

Acknowledgments

The authors are indebted to the personnel of both state and federal agencies who provided their time and advice in the preparation of this handbook. We acknowledge Carol Fountain and Susan Gildersleeve at the University of Florida for their assistance in editing this handbook. We also acknowledge funding received for updating this publication from the James S. and Dorothy F. Wershow UF/IFAS Center for Agricultural and Natural Resource Law Endowment.