

Cherokee Nation Code Annotated

Title 27: Environmental Quality

Chapter 7: Toxic and Hazardous Substance Control

§ 704. Regulation of hazardous chemical substances and mixtures

Cite as: 27 CNCA § 704

A. Scope of regulation. If the CN EPC finds that there is a reasonable basis to conclude that the manufacture, processing, distribution, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment, the CN EPC shall by the rules and regulations adopted by 27 CNCA § 702 apply one (1) or more of the following requirements to such substance or mixture to the extent necessary to protect adequately against such risk using the least burdensome requirements:

1. A requirement:

a. prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture, or

b. limiting the amount of such substance or mixture which may be manufactured, processed, or distributed within the jurisdiction of Cherokee Nation;

2. A requirement prohibiting or otherwise regulating any manner or method of commercial use of such substance or mixture within the jurisdiction of Cherokee Nation;

3. A requirement prohibiting or otherwise regulating any manner or method of disposal of such substance or mixture, or of any article containing such substance or mixture, by its manufacturer or processor or by any other person who uses, or disposes of such substance or mixture within the jurisdiction of Cherokee Nation.

The CN EPC regulations promulgated under this section are to supplement federal law, and, as such, federal laws and regulations concerning toxic and hazardous substances will serve as a minimum standard for Cherokee Nation.

B. Promulgation of subsection (A) rules.

1. In promulgating any rule or regulations pursuant to 27 CNCA § 702 under subsection (A) of this section with respect to a chemical substance or mixture, the CN EPC shall consider and publish a statement with respect to:

a. the effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture;

b. the effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture;

c. the benefits of such substance or mixture for various uses and the availability of substitutes for such uses.

2. When prescribing a rule under subsection (A) the CN EPC shall in compliance with the Cherokee Nation Administrative Procedure Act, 1 CNCA § 101 et seq.:

a. publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule;

b. allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available;

c. provide an opportunity for an informal hearing in accordance with paragraph 3 of this subsection;

d. promulgate, if appropriate, a final rule based on the matter in the rule-making record; and

e. make and publish with the rule the finding described in subsection (A) of this section.

3. Informal hearings required by subparagraph c of paragraph 2 may be conducted by the CN EPC in accordance with the following requirements:

a. Subject to subparagraph b of this paragraph, an interested person is entitled:

i. to present such person's position orally or by documentary submissions (or both), and

ii. if the CN EPC determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under clause ii of subparagraph b) such cross-examination of persons as the Administrator determines:

(I) to be appropriate, and

(II) to be required for a full and true disclosure with respect to such issues.

b. The CN EPC may prescribe such rules and make such rulings concerning procedures in such hearings to avoid unnecessary costs or delay. Such rules or rulings may include:

i. the imposition of reasonable time limits on each interested person's oral presentations, and

ii. requirements that any cross-examination to which a person may be entitled under subparagraph a of this paragraph be conducted by the CN EPC on behalf of that person in such manner as the CN EPC determines:

(I) to be appropriate, and

(II) to be required for a full and true disclosure with respect to disputed issues of material fact.

c. A tape recording shall be taken of any oral presentation made, and cross-examination conducted in any informal hearing under this subsection. Such transcript shall be available to the public upon payment of cost of such transcription cost.

C. Effective date.

1. The CN EPC shall specify in any rule under subsection (A) of this section the date on which it shall take effect, which date shall be as soon as feasible.

2. The CN EPC may declare a proposed rule under subsection (A) of this section to be effective upon its publication in the *Cherokee Phoenix* and until the effective date of final action taken, respecting such rule if the CN EPC determines that:

a. the manufacture, processing, distribution, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before such effective date; and

b. making such proposed rule so effective is necessary to protect the public interest.

D. Polychlorinated biphenyls (PCB's). Disposal of PCB's within Cherokee Nation shall meet at a minimum the federal requirements in 15 U.S.C. § 2605(e) and such additional requirements as may be established by the CN EPC.

Historical Data

LA 1–93, eff. June 14, 1993. Renumbered from 63 CNCA § 704.