

OFFICE OF THE TEXAS STATE CHEMIST

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FERTILIZER INDUSTRY MEMORANDUM No. 5-9

FIRE MARSHAL INSPECTION OF AMMONIUM NITRATE STORAGE

OBJECTIVE:

To define the phrase “hazardous condition under Subsection (b) or a violation of Subsection (a) or (c)” in the Texas Commercial Fertilizer Control Act in §63.158, provide a mechanism for a Fire Marshal to report a hazardous condition or violation, and how the Texas Feed and Fertilizer Control Service will implement Subsections (d), (e), (f), and (g).

BACKGROUND:

Subchapter I titled Ammonium Nitrate passed by the 80th Texas State Legislature charged the Texas Feed and Fertilizer Control Service with the authority to regulate a person who produces, stores, transfers, offers for sale or sells ammonium nitrate or ammonium nitrate material. In HB 2546, the Service was directed to adopt rules allowing a person to refuse to sell ammonium nitrate or ammonium nitrate material based on the season or the location of the sale §63.154(b)(1) and distribute forms to each person registered under this subchapter to be used to record the information required under Subsection §63.154(b)(2). The act also prescribed a unique registration process, issuance of a permit by the Service §63.152(b), and collection of a fee to cover the cost of the additional registration §63.152(c). These rules and forms were published in September, 2007.

The Service promulgated new rules in 2014 in response to legislative intent to require appropriate signage to designate explosive hazard (National Fire Protection Association 704 Warning Placards). During rule making, the Service also required a separation of ammonium nitrate storage by 30 feet from combustible or flammable material, required the owner or operator to register the storage facility in the Tier II Chemical Reporting Program, and submit storage facility information to the Department of Homeland Security (DHS) through the online Chemical Security Awareness Tool. These rules were codified into statute via HB 942 in Section §63.158.

In 2015, HB 942 indicates that the Service may direct the owner or operator of the facility to correct any hazardous conditions under §63.158 Subsection (b) and shall direct the owner or operator of the facility to correct a violation of §63.158 Subsection (a) or (c). The Service views the legislative intent of this provision to provide a uniform mechanism for a fire marshal [§63.151 (4)] to report violations to the Service and to direct the owner or operator of the facility to correct the hazardous condition or violation. The firm will be subject to enforcement action (§63.156) by the Service within 10 days for violations under §63.158 Subsection (b) or immediate enforcement action for violations under §63.158 Subsection (a) or (c).

POLICY:

I. Compliance policy for §63.158 (a)(c)

1. Refusal of entry will result in immediate suspension of the ammonium nitrate permit §63.156 (1)(2) and further regulatory action including prosecution described in §63.145.
2. Upon notification by the fire marshal that the firm is not in compliance with §63.158 Subsection (c), the Service will notify the firm to correct the deficiency within 10 days (Form 3). Failure to comply will result in the suspension or revocation of the ammonium nitrate permit §63.156 (1)(2).

II. Compliance policy for §63.158 (b)

1. Fire marshals shall inspect ammonium nitrate storage facilities and communicate with the Service following a process flow depicted in Figure 1 if a hazardous condition is present.
2. The facility shall provide the Fire Marshall a corrective action plan (Form 1), which will be forwarded to the Service.
3. The Fire marshal shall notify the Service if the corrective action was not satisfactorily performed by completing and submitting to the Service the ammonium nitrate violation report (Form 2).
4. The Service may notify the firm that they are in violation with the Texas Commercial Fertilizer Control Act [§63.158 Subsection (b)] and shall notify the firm if they are in violation of Subsection [§63.158 Subsection (a) or (c)].
5. The Service shall implement enforcement action within 10 days of receipt of Form 2.

Dr. Timothy J. Herrman
State Chemist & Director
Office of the Texas State Chemist

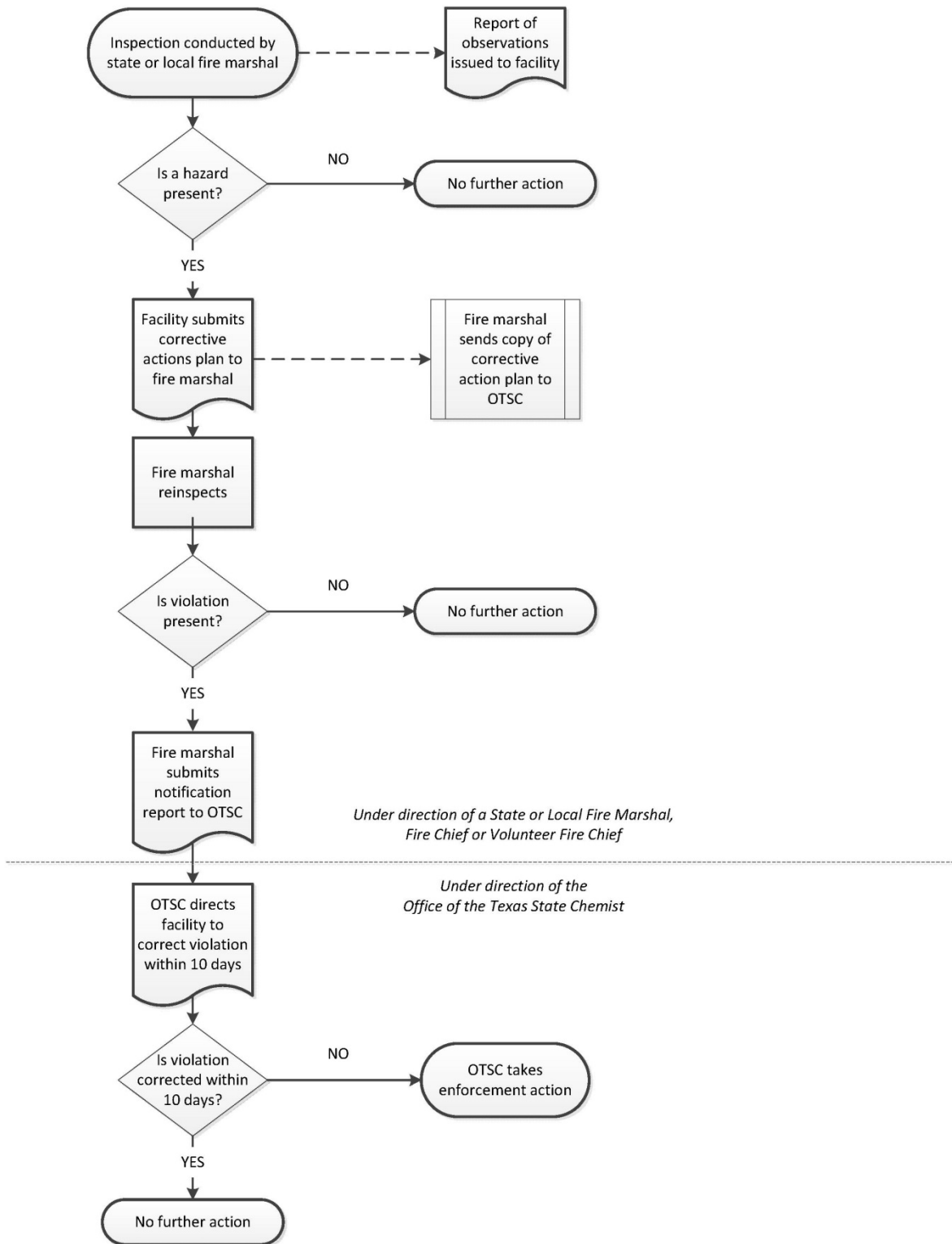


Figure 1. Ammonium Nitrate Inspection & Reporting of Hazardous Conditions §63.158(b) Process Flow

Form 1. Hazardous Conditions Corrective Action Plan

Firm Name: _____

Owner/Operator: _____

Physical Address: _____

Mailing Address: _____
(if different from above)

Phone: _____ Alternate phone: _____

Fax: _____ Email: _____

Instructions

As per Office of the Texas State Chemist (OTSC) [Fertilizer Industry Memorandum No. 5-9: Fire Marshal Inspection of Ammonium Nitrate Storage](#), ammonium nitrate storage facilities will submit this completed form to the state fire marshal, local fire marshal, fire chief, or volunteer fire chief that examined the facility and determined the presence of one or more hazardous conditions described in the [Texas Commercial Fertilizer Control Act §63.158\(b\) Fire Prevention at Ammonium Nitrate Storage Facilities](#).

1. Indicate the hazardous condition(s) identified during the fire marshal inspection related to:
 - The presence of flammable substance;
 - A dangerous or dilapidated wall, ceiling, or other structural element;
 - Improper electrical components, heating or other building services or facilities;
 - The presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring;
 - The dangerous storage of substances other than ammonium nitrate or ammonium nitrate material, including storage or use of hazardous substances; or
 - Inappropriate means of egress, fire protection, or other fire related safeguard.
2. For each hazardous condition noted above, describe how the condition will be corrected and how recurrence of the condition will be prevented in the future.

Comments:

Submitted to:

(name of state or local fire marshal)

Date Submitted:

Form 2. Ammonium Nitrate Notification Report

Facility Information			
Facility name			
Address (physical)			
Address (mailing)			
Main office phone			
Alternate phone			
Primary contact			
Primary contact title			
Email			
Fire Marshal Information			
Agency name			
Address (physical)			
Address (mailing)			
Main office phone			
Alternate phone			
Primary contact			
Primary contact title			
Email			
OTSC Office Use Only			
<i>Received Date</i>	<i>Director's Authorization Date</i>	<i>Firm Notification Date</i>	<i>Enforcement Action Due Date</i>

Instructions

As per the [Texas Commercial Fertilizer Act, Texas Agricultural Code \(1981\), §63.158 Fire prevention at Ammonium Nitrate Storage Facilities](#), this form is to be completed by the state fire marshal, local fire marshal, fire chief or volunteer fire chief if an ammonium nitrate storage facility:

- Refuses inspection as per §63.158(a);
- Fails to correct hazardous conditions as per §63.158(b) following the process outlined by Office of the Texas State Chemist (OTSC) Fertilizer Industry Memorandum No. 5-9: Fire Marshal Inspection of Ammonium Nitrate Storage; and, or
- Fails to conform with §63.158(c).

Submit completed form to:

Office of the Texas State Chemist
 ATTN: Compliance
 P.O. Box 3160
 College Station, TX 77841-3160
 Phone: (979) 845-1121

Fax: (979) 845-1389
Email: web@otsc.tamu.edu
Website: otsc.tamu.edu

Violation Information (*check all that apply*)

1. Violations as per §63.158(a)

Refusal of inspection

2. Uncorrected hazardous conditions as per §63.158(b)

The presence of flammable substance

A dangerous or dilapidated wall, ceiling, or other structural element

Improper electrical components, heating or other building services or facilities

The presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring

The dangerous storage of substances other than ammonium nitrate or ammonium nitrate material, including storage or use of hazardous substances

Inappropriate means of egress, fire protection, or other fire related safeguard

3. Violations as per §63.158(c)

Deficiencies observed (*describe below*)

Form 3. Notification Letter to Ammonium Nitrate Facilities

Date

Firm Name and Address

Contact

Re: Notification of Hazardous Condition/Violation from Fire Marshal

Mr./Ms.,

The Texas Commercial Fertilizer Control Act, Chapter 63, Subchapter I. Ammonium Nitrate, §63.158 Fire Prevention at Ammonium Nitrate Storage Facilities, necessitates a person who engages in the sale of ammonium nitrate or ammonium nitrate material allow a fire marshal to enter the facility to make a thorough examination of the facility; and allow the local fire department access to the facility to perform a pre-fire planning assessment. On **date**, the Service was notified by **fire marshal/local fire department** of the hazardous condition(s)/violation(s) indicated below.

4. Violations as per §63.158(a)

Refusal of inspection

5. Uncorrected hazardous conditions as per §63.158(b)

- The presence of a flammable substance
- A dangerous or dilapidated wall, ceiling, or other structural element
- Improper electrical components, heating, or other building services or facilities
- The presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring
- The dangerous storage of substances other than ammonium nitrate or ammonium nitrate material, including storage or use of hazardous substances
- Inappropriate means of egress, fire protection, or other fire related safeguard

6. Violations as per §63.158(c)

Deficiencies observed (*describe below*)

The Service shall implement enforcement action, which includes issuing a stop-sale order and suspending your ammonium nitrate registration, if you do not take immediate corrective action.

Respectfully,

Ben Jones, Associate Director of Compliance
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P.O. Box 3160
College Station, TX 77841
(979) 845-1121 (ph)
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blj@otsc.tamu.edu

cc: Tim Herrman, State Chemist and Director
Name, Investigator, **City**, TX