

EPCRA DESCRIPTION BY SECTIONS

The Emergency Planning and Community Right to Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Re-Authorization Act of 1986 (SARA Title III), is codified at 42 U.S.C. 11001-11050. The statute contains three basic subtitles:

- Subtitle A: Emergency Planning and Notification
- Subtitle B: Reporting
- Subtitle C: General Provisions

Subtitle A establishes the framework for state and local emergency planning. Subtitle B provides the mechanism for informing the public of the presence of chemicals in the community. Subtitle C contains provisions that apply to all the information required to be obtained under both Subtitles A and B. Regulations implementing the statutory provisions of EPCRA are codified in Title 40 of the Code of Federal Regulations (CFR) parts 350, 355, 370, and 372. The complete text of the law is at Appendix h of this handbook.

The Role of State and Local Governmental Authorities

EPCRA is unique among Federal environmental laws in that Congress specifically requires state and local governmental authorities to administer the majority of the law by receiving reports and notifications, planning for emergencies and by providing the public with access to submitted information. In order to achieve these objectives, Sections 310 and 303 of EPCRA mandate the creation of two state and local organizations: the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC). In addition, EPCRA also requires facilities to send certain reports and notifications to existing local fire departments.

The statutory provisions describing the role of state and local governmental authorities under EPCRA are found in Sections 301-302 and 324 of the statute. Regulations implementing the statutory provision of EPCRA relating to governmental organizations are found in various parts of 40 CFR Parts 300, 350, and 370.

EPCRA Section 302 – Emergency Planning Notification

Section 302 of EPCRA requires the owner or operator of a facility to provide a one-time written notification to the SERC and LEPC of any listed “Extremely Hazardous Substance” (EHS) present at the facility at any one time in amounts equal to or in excess of the specified “Threshold Planning Quantity” (TPQ) for that substance. The list of EHSs, TPQs, Reporting Quantities (RQ), etc. for EPCRA, CERCLA, and 112(r) are found in the “Title III List of Lists”, published by the U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response. It is updated and published every two years,

and may be downloaded from the EPA's website:

<http://www.epa.gov/emergencies//index.htm>.

The most current list is included in Appendix D.

Facilities meeting the notification requirements of Section 302 must also designate a facility representative or facility emergency response coordinator to participate with the LEPC in the local emergency planning process.

Regulations implementing the provisions of Section 302 are contained in 40 CFR Part 355.

EPCRA Section 304 – Emergency Response Notification

Section 304 requires the owner or operator of a facility at which a hazardous chemical is produced, used, or stored to immediately notify the LEPC and the SERC of certain releases into the environment of a reportable quantity of any "Extremely Hazardous Substance" (EHS) or CERCLA hazardous substance. An owner or operator of a facility from which there is a transportation-related release may meet the notification requirements of Section 304 by notifying the 911 operator, or in the absence of 911, the telephone operator. As soon as practicable after an initial release notification, the owner or operator of the facility must provide a written follow-up emergency notice to the LEPC and SERC. Regulations implementing Section 304 are codified at 40 CFR 355.40.

Releases which result in exposure to persons solely within the site on which the facility is located are exempt from Section 304 notification. Releases reported under Section 304 may also require notification to the National Response Center (NRC) under Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Regulations implementing CERCLA Section 103(a) are codified at 40 CFR Part 302.

EPCRA Section 311 – Submission of Material Safety Data Sheets

Section 311 provides that the owner or operator of any facility is required to prepare or have available a Material Safety Data Sheet (MSDS) for a "hazardous chemical" under the Occupational Safety and Health Act (OSHA) and due to regulations promulgated under that act he/she must submit the MSDS or a list of MSDS chemicals by category to three agencies: (1) the SERC; (2) the LEPC; and (3) the local fire department with jurisdiction over the facility.

The owner or operator of a facility is required to submit either the MSDS or a list of MSDS chemicals if the hazardous chemical is present at the facility at any one time in amounts equal to or greater than the minimum threshold level. The EPA established the minimum threshold level for most MSDS chemicals at 10,000 pounds (4,540 kg). However, for any chemical on the EPCRA list of EHS's (reference noted above in description of Section 302), the minimum threshold level is 500 pounds (227 kg) or the TPQ listed for that EHS, whichever is the lower quantity.

The initial deadline for compliance with Section 311 was October 17, 1987, for manufacturing facilities (those facilities with Standard Industrial Classification (SIC) Codes 20-39), September 24, 1988, for non-manufacturing facilities (other than construction), April 30, 1989, for commercial construction industry facilities, and August 30, 1994, for federal facilities (by Executive Order 12856).

After initial compliance deadlines, a facility owner or operator subject to Section 311 must submit the MSDS or list of MSDS hazardous chemicals within three (3) months after the facility first handles a hazardous chemical required to have a MSDS by OSHA. Significant new information concerning a MSDS hazardous chemical previously reported must be submitted to the appropriate agencies within three (3) months of receipt.

Regulations implementing the requirements of EPCRA Section 311 are found at 40 CFR Part 370.

EPCRA Section 312 – Emergency and Hazardous Chemical Inventory

Section 312 provides that the owner or operator of any facility required to prepare or have available a MSDS for a hazardous chemical under OSHA and regulations promulgated under OSHA must prepare and submit an annual inventory of the MSDS hazardous chemicals present at the facility during the previous calendar year. This annual inventory is officially titled the “Emergency and Hazardous Chemical Inventory”, but is commonly referred to as the “Tier I Inventory”, “Tier II Inventory”, “MSDS Inventory”, or “Section 312 Inventory.”

The owner or operator of a facility is required to submit the inventory if any MSDS chemical is present for any amount of time at the facility during the reporting year in amounts equal to or greater than the minimum threshold level. The minimum threshold level for most MSDS chemicals is 10,000 pounds (4,540 kg). However, for any chemical on the EPCRA EHS list, the threshold level is 500 pounds (227 kg) or the TPQ listed for that EHS, whichever is lower.

The owner or operator of a covered facility must submit the inventory to the SERC, LEPC, and local fire department with jurisdiction over the facility. Inventory forms are due annually on March 1 for the preceding calendar year.

EPA required commercial manufacturing facilities (those entities with Sic Codes 20-39) to submit the first inventory on March 1, 1988 for the calendar year 1987. Commercial, non-manufacturing facilities (other than construction) were required to submit the inventory by March 1, 1989, and annually thereafter. Commercial construction facilities were required to submit the inventory by March 1, 1990, and annually thereafter. Federal facilities were required to submit the inventory by March 1, 1995, and annually thereafter. With the exception of federal facilities, the different initial due dates reflect when the facility became subject to the OSHA Hazard Communication Standard.

Facilities have the initial option of submitting either a Tier I or Tier II Inventory form. Information on the form identifies the hazards, amounts and locations of reportable MSDS hazardous chemicals. The Tier I form contains the required information by hazard category without identifying the specific chemicals. The Tier II form contains the required in-

formation on a chemical-specific basis. EPA has published Tier I and II forms, but states may require the use of their own forms. **The South Carolina SERC has mandated that only Tier II forms are to be used to report chemical inventory.**

Regulations implementing the requirements of EPCRA Section 312 are found at 40 CFR Part 370.

EPCRA Section 313 – Toxic Chemical Release Inventory Report

Section 313 requires owners / operators of certain facilities that manufacture, process, or otherwise use more than a threshold amount of any listed “toxic chemical” to annually submit a Toxic Chemical Release Inventory Report (Form R or TRI) for that chemical. The form identifies the amount of the listed toxic chemical transferred off-site as waste and routinely or accidentally released on-site into the air, land, or water. Facilities must submit the required information to both the federal EPA and to the state in which the facility is located. Reports are due by July 1 of each year for activities occurring in the preceding calendar year.

Section 313 also requires persons who sell or distribute a mixture or trade-name product containing one of the listed toxic chemicals to annually notify the person receiving the product of the identity and percentage of all listed toxic chemicals in the product. This notification is known as the “supplier notification requirement.”

Regulations implementing the requirements of Section 313 are found at 40 CFR Part 372.

EPCRA Enforcement

The federal government, state government, local government, citizens, and health professionals may all enforce certain provision of EPCRA. Section 325 of EPCRA authorizes the Administrator of EPA to seek administrative, civil, and criminal penalties against owners or operators of facilities that fail to comply with notification and reporting requirements. The law sets the maximum penalty amounts, but EPA uses its own penalty policies to adjust penalties on a case-by-case basis.

Section 326 of EPCRA authorizes any citizen, state, or local government to bring a civil judicial action to enforce certain provisions of EPCRA. Health professionals who have been denied access to information under EPCRA may also bring civil judicial action to obtain such information.