

THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OVERVIEW

The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 establishes requirements for federal, state, and local governments and industry regarding emergency planning and "Community Right-to-Know" (CRTK) reporting on hazardous and toxic chemicals. This law builds upon U.S. Environmental Protection Agency's (EPA) Chemical Emergency Preparedness Program (CEPP) and numerous state and local programs aimed at helping communities to better meet their responsibilities in regard to potential chemical emergencies. The CRTK provisions will help increase the public's knowledge and access to information on the presence of hazardous chemicals in their communities and releases of these chemicals into the environment. States and communities, working with facilities, will be better able to improve chemical safety, protect public health, and the environment.

Nothing in this document should be construed to indicate that EPA has determined states have Title III authority over Indian reservations. For purposes of this document, definition of the terms "State" and "Governor" includes the "Indian Tribe" and "Tribal Chairman." EPA has issued a final rule on July 26, 1990, regarding the application of the Emergency Planning and Community Right-to-Know law to Indian lands.

The Emergency Planning and Community Right-to-Know Act (also known as SARA Title III or EPCRA) provisions has four major sections: emergency planning (Section 301-303), emergency release notification (Section 304), community right-to-know reporting requirements (Sections 311-312), and toxic chemical release inventory (Section 313). Information from these four reporting requirements will help states and communities develop a broad perspective of chemical hazards for the entire community as well as for individual facilities.

SECTIONS 301-303: EMERGENCY PLANNING

The emergency planning sections are designed to develop state and local government emergency response and preparedness capabilities through better coordination and planning, especially within the local community.

STATE EMERGENCY RESPONSE COMMISSION

The Emergency Planning and Community Right-to-Know Act required the Governor of each state designate a State Emergency Response Commission (SERC). Many SERCs include public agencies and departments concerned with issues relating to environment, natural resources, emergency services, public health, occupational safety, and transportation. Also, interested public and private sector groups and associations with experience in emergency planning and Community Right-to-Know issues may be included in the State commission. At this time, all governors have established SERCs.

The SERC must also have designated local emergency planning districts and appointed Local Emergency Planning Committees (LEPC) for each district. SERCs have designated over 4,000 local districts. Thirty-five State commissions chose counties as the basic district designation (often with separate districts for municipalities) and ten SERCs designated substate planning districts. The SERC is responsible for supervising and coordinating the activities of the LEPC, for establishing procedures for receiving and processing public requests for information collected under other sections of SARA Title III, and for reviewing local emergency plans.

LOCAL EMERGENCY PLANNING COMMITTEES

This LEPC must include at a minimum, elected state and local officials, police, fire, civil defense, public health professionals, environmental, hospital, and transportation officials as well as representatives of

facilities subject to the emergency planning requirements, community groups, and the media. As soon as facilities are subject to the emergency planning requirements, they must designate a representative to participate in the planning process.

The LEPC is required to complete a number of tasks, including establishing rules, giving public notice of its activities, and establishing procedures for handling public requests for information; however, the LEPC's primary responsibility is to develop an emergency response plan by October 17, 1988, and review it at least annually thereafter. In developing this plan, the LEPC evaluates available resources for preparing for and responding to a potential chemical accident. The plan must:

- identify facilities and transportation routes of extremely hazardous substances;
- describe emergency response procedures, on-site and off-site;
- designate a community coordinator and facility coordinator(s) to implement the plan;
- outline emergency notification procedures;
- describe methods for determining the occurrence of a release and the probable affected area and population;
- describe community and industry emergency equipment and facilities and identify the persons responsible for them;
- outline evacuation plans;
- describe a training program for emergency response personnel (including schedules); and,
- present methods and schedules for exercising emergency response plans.

EMERGENCY RESPONSE PLANS

In order to assist the LEPCs in preparing and reviewing plans, Congress required the National Response Team (NRT), composed of 15 Federal agencies with emergency response responsibilities, to publish guidance on emergency response planning. This guidance, the "Hazardous Materials Emergency Planning Guide, (NRT-1)" was published by the NRT in March 1987. In 1990, the NRT also published "Developing Hazardous Materials Exercise Program: A Handbook for State and Local Official (NRT-2)" to help assist SERCs and LEPCs exercise their emergency response plans.

The emergency response plan must be initially reviewed by the SERC and, at least, annually by the LEPC. Regional Response Teams (RRTs), composed of federal regional officials and state representatives, may review the plans and provide assistance to the LEPCs upon request by the SERC or LEPC.

Planning activities of LEPCs and facilities should be initially focused on, but not limited to, the 360 extremely hazardous substances published in the Federal Register. Plans should be comprehensive, addressing all hazardous materials of concern and transportation as well as fixed facilities. The list includes the threshold planning quantities (minimum limits) for each substance (see Code of Federal Regulations (CFR) Part 40, Section 355). Through rule making, EPA can revise the list and threshold planning quantities based on the toxicity, reactivity, volatility, dispensability, combustibility, or flammability of substance.

Any facility that has present any of the listed chemicals in a quantity equal to or greater than its threshold planning quantity is subject to the emergency planning requirements. In addition, the SERC or the Governor can designate additional facilities, after public comment, to be subject to these requirements. Covered facilities must notify the SERC and LEPC that they are subject to these requirements within 60 days after they begin to have present any of the extremely hazardous substances in an amount equal to or in excess of threshold planning quantities.

In addition, the SERC must notify the EPA regional office of all facilities subject to the emergency planning requirements, including facilities designated by the SERC or the governor.

SECTION 304: EMERGENCY NOTIFICATION

Facilities must immediately notify the LEPCs and the SERCs likely to be affected if there is a release into the environment of a hazardous substance that exceeds the reportable quantity for that substance. Substances subject to this requirement are those on the list of 360 extremely hazardous substances as published in Federal Register (40 CFR 355) as well as the more than 700 hazardous substances subject to the emergency notification requirements under CERCLA Section 103(a)(40 CFR 302.4). Some chemicals are common to both lists. The CERCLA hazardous substances also require notification of releases to the National Response Center (NRC), which alerts federal responders.

Initial notification can be made by telephone, radio, or in person. Emergency notification requirements involving transportation incidents can be met by dialing 911, or in the absence of a 911 emergency number, calling the operator. This emergency notification needs to include:

- The chemical name;
- 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; and,
- Name and telephone number of contact person.
- Section 304 also requires a written follow-up emergency notice as soon as practicable after the release. The follow-up notice or notices must:
 - Update information included in the initial notice, and
 - Provide information on actual response actions taken; and advice regarding medical attention necessary for exposed individuals.

If LEPCs are not yet formed, releases should be reported to appropriate local response officials.

SECTION 311-312: COMMUNITY RIGHT-TO-KNOW REQUIREMENTS

There are two Community Right-to-Know reporting requirements within the Emergency Planning and Community Right-to-Know Act. Section 311 require facilities that must prepare material safety data sheets (MSDS) under Occupational Safety and Health Administration (OSHA) regulations to submit either copies of their MSDSs or a list of MSDSs chemicals to:

- The LEPC,
- The SERC (in Alaska, DEC serves as the SERC's repository) and,
- The local fire department with jurisdiction over the facility.

If the facility owner or operator chooses to submit a list of MSDS chemicals, the list must include the chemical or common name of each substance and must identify the applicable hazard categories. These hazard categories are:

- Immediate (acute) health hazard,
- Delayed (chronic) health hazard,
- Fire hazard,
- Sudden release of pressure hazard, and,
- Reactive hazard.

If a list is submitted, the facility must submit a copy of the MSDSs for any chemical on the list upon the request of the LEPC or SERC. Also, EPA has established threshold quantities for hazardous chemicals below which no facility must report. The current thresholds for Section 311 are:

- For extremely hazardous substances: 500 pounds or the threshold planning quantity, whichever is lower.
- For all other hazardous chemicals: 10,000 pounds.

The initial submission of the MSDSs or a list of MSDSs chemicals was due on October 17, 1987, or three months after the facility is required to prepare or have available an MSDSs under OSHA regulations. Currently, OSHA regulations require all employers to have or prepare MSDSs for their chemicals. Under the Emergency Planning and Community Right-to-Know statute, facilities newly covered by the OSHA regulations must submit MSDSs or a list of MSDSs chemicals within three months after they become covered.

An MSDS or a revised list must be provided when new hazardous chemicals become present at a facility in quantities at or above the established threshold levels after the deadline. A revised MSDS must be provided to update the original MSDS if significant new information is discovered about the hazardous chemical.

Reporting under section 312 requires a facility to submit an emergency and hazardous chemical inventory form to the LEPC, the SERC, and the local fire department with jurisdiction over the facility. Hazardous chemicals covered by section 312 are those for which facilities are required to prepare or have available an MSDS under OSHA's Hazard Communication Standard and that were present at the facility at any time during the previous calendar year above specified thresholds.

The specific threshold quantities established by EPA for Section 312 for hazardous chemicals, below which no facility must report, are:

- For extremely hazardous substances: 500 pounds or the threshold planning quantity, which is lower.
- For all other hazardous chemicals: 10,000 pounds.
- The inventory form incorporates a "two-tier" approach. Under Tier I, facilities must submit the following aggregate information for each applicable hazard category:
 - An estimate (in ranges) of the maximum amount of chemicals for each category present at the facility at any time during the preceding calendar year;
 - An estimate (in ranges) of the average daily amount of chemicals in each category; and,
 - The general location of hazardous chemicals in each category.

The Tier II report contains basically the same information as the Tier I, but it must name the specific chemical. If requested by an LEPC, SERC, or local fire department, the facility must provide the following Tier II information for each substance subject to the request:

- The chemical name or the common name as indicated on the MSDS,
- An estimate (in ranges) of the maximum amount of the chemical present at any time during the preceding calendar year,
- A brief description of the manner of storage of the chemical,
- The location of the chemical at the facility, and,
- An indication of whether the owner elects to withhold location information from disclosure to the public.

EPA published a uniform format for the inventory forms on October 15, 1987. However, because many state commissions have additional requirements or have incorporated the federal contents in their own

forms. Tier I/II forms should be obtained from the SERC. The Tier I information must be submitted for covered facilities on or before March 1 annually.

The Tier II form may be sent by the facility instead of a Tier I form. EPA believes that Tier II reports provide emergency planners and communities with more useful information and encourages facilities to submit Tier II forms. The public may also request Tier II information from the SERC and the LEPC. The information submitted by facilities under Sections 311 and 312 must generally be made available to the public by LEPCs and SERCs during normal working hours.

SECTION 313: TOXIC CHEMICAL RELEASE REPORTING

Section 313 of the Emergency Planning Community Right-to-Know Act of 1986 requires EPA to establish an inventory of routine toxic chemical emissions from certain facilities. Facilities subject to this reporting requirement are required to complete a Toxic Chemical Release Inventory Form (Form R) for specified chemicals. The form must be submitted to EPA and those state officials designated by the governor annually on July 1. These reports should reflect releases during the preceding calendar year.

The purpose of this reporting requirement is to inform the public and government officials about routine releases of toxic chemicals to the environment. It will also assist in research and the development of regulations, guidelines, and standards.

The reporting requirement applies to owners and operators of facilities that have 10 or more full-time employees, that are in Standard Industrial Classification (SIC) codes 20 through 38 (i.e., manufacturing facilities) and that manufacture (including importing), process, or otherwise use a listed toxic chemical in excess of specified threshold quantities.

Facilities manufacturing or processing any of these chemicals in excess of 25,000 pounds are required to submit the form by July 1st of the following calendar year. Facilities otherwise using listed toxic chemicals in quantities over 10,000 pounds in a calendar year are required to submit toxic chemical release forms by July 1 of the following calendar year. EPA can revise these threshold quantities and covered SIC codes.

The list of toxic chemicals subject to reporting consisted initially of chemicals listed for similar reporting purposes by the States of New Jersey and Maryland. There are over 300 chemicals and categories on these lists. Through rule making, EPA can modify this combined list (a current toxic chemical list may be obtained through the EPCRA Hotline).

The final Toxic Chemical Release Form and regulations were published in the Federal Register on February 16, 1988. (NOTE: EPA has revised and updated the Toxic Chemical Release Form since that time). The following information is required on the form:

- The name, location and type of business;
- Off-site locations to which the facility transfers toxic chemicals in waste for recycling, energy recovery, treatment or disposal;
- Whether the chemical is manufactured (including importation), processed, or otherwise used and the general categories of use of the chemical;
- An estimate (in ranges) of the maximum amounts of the toxic chemical present at the facility at any time during the preceding year;
- Quantity of the chemical entering each medium--air, land, and water--annually;
- Waste treatment/disposal methods and efficiency of methods for each waste stream;
- Source reduction and recycling activities; and,
- A certification by senior facility official that the report is complete and accurate.

Reports are sent to EPA and designated state agencies. EPA established and maintains a national toxic chemical inventory based on the data submitted. The public is able to access this national database and obtain the data through other means. See the Public Access Section of this document for further details.

POLLUTION PREVENTION LAW

The Pollution Prevention Act of 1990 has significantly expanded the Toxic Release Inventory (TRI). It requires collection of mandatory information on source reduction, recycling, and treatment beginning with the 1991 reporting year. The new requirements include reporting of the following information:

- Amounts released or disposed on-site or off-site, the quantities from the previous year, the quantities anticipated for the next two years;
- Amounts recycled on-site and sent off-site for recycling, the quantities from the previous year, the quantities anticipated for the next two year;
- Amounts treated on-site and sent off-site for treatment, the quantities from the previous year, and the quantities anticipated for the next two years;
- Amounts used for energy recovery on-site and sent off-site, quantities from the previous year, and the quantities anticipated for the next two years;
- Types of source reduction practices implemented and the techniques used to identify those practices;
- Methods of recycling used on-site;
- Production ratio or activity index to track changes in the level of economic activity at a facility; and,
- Amount of releases resulting from one-time events not associated with production processes.

OTHER SARA TITLE III PROVISIONS

TRADE SECRETS.

Section 322 of the Emergency Planning and Community Right-to-Know Act addresses trade secrets as they apply to emergency planning, Community Right-to-Know, and toxic chemical release reporting. A facility may withhold the specific chemical identity on these submittals. No trade secrets are allowed to be claimed under Section 304 of the statute. The withholder must show that:

- The information has not been disclosed to any person other than a member of the local planning committee, a government official, an employee of the withholder or someone bound by a confidentiality agreement; measures have been taken to protect the confidentiality; and the withholder intends to continue to take such measures;
- The information is not required to be disclosed to the public under any other Federal or State law;
- Disclosure of the information is likely to cause substantial harm to the competitive position of the withholder; and,
- The chemical identity is not readily discoverable through reverse engineering.

However, even if chemical identity information can be legally withheld from the public, section 323 provides for disclosure of this information to health professionals who need the information for diagnostic and treatment purposes or local health officials who need the information for prevention and treatment activities. In non-emergency cases, the health professional receiving the information must sign a confidentiality agreement with the facility and provide a written statement of need. In medical emergency situations, the health professional must, if requested by the facility, provide these documents as soon as circumstances permit.

Information claimed as a trade secret and substantiation for that claim must be submitted to EPA. More detailed information on the procedure for submitting trade secrecy claims can be found in the trade

secrets final rule, published in the Federal Register, July 29, 1988 (40 CFR 350). Any person may challenge trade secret claims by petitioning EPA. The Agency must then review the claim and rule on its validity.

The trade secret regulations cover the process for submission of claims, petitions for disclosure, and the review process for petitions.

SARA TITLE III PENALTIES

Section 325 of the Emergency Planning and Community Right-to-Know Act addresses the penalties for failure to comply with the requirements of this law. Civil and administrative penalties ranging up to \$10,000-\$75,000 per violation or per day per violation can be assessed to facilities that fail to comply with the emergency planning (section 302), emergency notification (section 304), Community Right-to-Know (sections 311 and 312), toxic chemical release (section 313), and trade secret (sections 322 and 323) reporting requirements.

Criminal penalties up to \$50,000 or five years in prison may also be given to any person who knowingly and willfully fails to provide emergency release notification. Penalties of not more than \$20,000 and/or up to one year in prison may be given to any person who knowingly and willfully discloses any information entitled to protection as a trade secret. In addition, section 326 allows citizens to initiate civil actions against EPA, state emergency response commissions, and/or the owner or operator of a facility for failure to meet the requirements of the emergency planning and Community Right-to-Know provisions. A state emergency response commission, local emergency planning committee, state or local government may institute actions against facility owner/operators for failure to comply with Title III requirements. In addition, states may sue EPA for failure to provide trade secret information.

PUBLIC ACCESS

Section 324 of the Emergency Planning and Community Right-to-Know Act provides for public access to information gathered under the law. Under this section, all material safety data sheets, hazardous chemical inventory forms, toxic chemical release inventory forms, toxic chemical release form follow-up emergency notices, and the emergency response plan must be made available during normal working hours by the SERC and LEPC. In order to inform the public of the availability and location of the information provided to the LEPC, the LEPC must publish a notice annually in the local newspaper.

In addition, Toxic Release Inventory (Section 313) information collected by EPA is available by telecommunications and other means. This information can be accessed through a variety of sources. Each year, EPA releases a printed report summarizing the information that was submitted for the annual toxic release inventory. A computerized on-line database of the Toxic Release Inventory data is available through the National Library of Medicine's TOXNET on-line system 24 hours a day. The complete Toxic Release Inventory on magnetic tape is available from the National Technical Information Service (NTIS) and the Government Printing Office (GPO). The 1987 TRI pertinent Hazardous Substance Fact Sheets containing reference material on the health and ecological effects of the regulated substances is available on CD-ROM from both NTIS and GPO. Also, available through NTIS and GPO are floppy diskettes containing state specific Toxic Release Inventory information. Interested parties may view the 1987 Toxic Release Inventory data on microfiche at selected Federal Depository and public libraries. The list of libraries is also available from NTIS and GPO. Both state and national sets of microfiche can also be purchased from NTIS and GPO. Most of these products are updated on an annual basis; therefore be sure to indicate which year's TRI data you would like.

RELATED LEGISLATION

The Oil Pollution Act (OPA) of 1990 includes national planning and preparedness provisions for oil spills that are similar to SARA Title III provisions for extremely hazardous substances. Plans are to be

developed at the local, State and federal levels. The OPA offers an opportunity for LEPCs to coordinate their Title III plans with area and facility oil spill plans covering the same geographical area.

The Hazardous Materials Transportation Uniform Safety Act (HMTUSA) includes funding grants to states for planning and hazmat training, as well as requiring the development of a national curriculum for training for responders. States must certify that they are complying with SARA Title III sections 301 and 303, and must pass through at least 75% of their planning grant directly to LEPCs; training grants to states and Indian tribes are to be used for training public sector employees in hazmat response and 75% of the training grant money must go to benefit the local responders.

The Clean Air Act Amendments require the EPA and the Occupational Safety and Health Administration (OSHA) to develop regulations for chemical safety management. Facilities that have certain chemical above specified threshold quantities will be required to develop a system to identify and evaluate hazards and manage those hazards safely. Information facilities develop on their hazards must be submitted to states and local emergency planners and available to the public.

The Pollution Prevention Act represents a fundamental shift in the traditional approach to pollution control. Instead of concentrating on the treatment and disposal of wastes, it focuses on source reduction. Specific provisions affect section 313 reporting and are described above.