

Purpose and Applicability of Regulations

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted by Congress in 1980 to clean up the nation's hazardous waste sites and to provide for emergency response to releases of hazardous substances into the environment. CERCLA is also called Superfund, and the hazardous waste sites are known as Superfund sites. In response to continuing community concern regarding hazardous materials and chemical release tragedies, a reauthorization and expansion of Superfund was signed into law in 1986. It is known as the Superfund Amendments and Reauthorization Act (SARA). Title III of SARA (SARA Title III) is the Emergency Planning and Community Right-To-Know Act (EPCRA).



SARA Title III establishes requirements for federal, state, and local governments, Indian tribes, and industry regarding emergency planning and Community Right-to-Know reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

Agencies and Their Laws and Rules

■ Federal Agencies

The U.S. Environmental Protection Agency (U.S. EPA) enforces SARA Title III. The regulations implementing SARA Title III are codified in Title 40 of the Code of Federal Regulations (CFR), Parts 350 through 372.

■ State Agencies

At the state level, Indiana law (Indiana Code 13-25-2) provides for the establishment of a state emergency response commission (SERC). The Indiana Emergency Response Commission (IERC) is comprised of 13 members who are appointed by the governor. The commission consists of professionals from state and local governments, private businesses and industries, and the general public. The main functions of IERC are to maintain SARA Title III records and to manage the local emergency planning commissions (LEPCs).

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■ Local Agencies

SARA Title III requires that the SERC establish LEPCs. LEPC members are appointed by the SERC. There are currently 92 LEPCs in Indiana. These committees consist of professionals from state, local, private, and public organizations. The function of each LEPC is to develop and manage the emergency response plans dealing with accidental chemical releases from facilities within its planning area, and to distribute information to the general public.

A complete list of LEPCs and their addresses and telephone numbers can be found at www.IN.gov/dhs/2362.htm. For further information, call the Indiana Emergency Response Commission at (317) 234-6796 or the Indiana Department of Environmental Management's (IDEM's) Community Right-To-Know Hotline at (877) 674-CRTK (2785).

| Definitions Of Regulated Materials | |
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| Extremely Hazardous Substances (as defined by SARA Title III) | An extremely hazardous substance (EHS) is any substance regulated under SARA Title III, Sections 302–304. The EHSs are listed in Appendices A and B of Title 40, Part 355 of the Code of Federal Regulations (CFR). |
| Hazardous Chemicals (as defined by OSHA) | As defined by the Emergency Planning and Community Right-to-Know Act (EPCRA), hazardous chemicals have the meaning given in Title 29, Section 1910.1200(c) of the CFR. It is any substance for which a facility must maintain a safety data sheet (SDS) under the Occupational Safety and Health Administration's Hazard Communication Standard/Employee Right-to-Know regulations, but does not include the following: <ol style="list-style-type: none"> (1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration. (2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use. (3) Any substance used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. (4) Any substance used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual. (5) Any substance used in routine agricultural operations or fertilizer held for sale by a retailer to the ultimate customer. |
| Hazardous Substances (as defined by CERCLA) | A hazardous substance is a substance subject to reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and listed in Title 40, Part 302.4 of the CFR. |

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| Definitions Of Regulated Materials | |
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| Hazardous Waste (as defined by RCRA) | As defined by the Resource Conservation and Recovery Act (RCRA), hazardous waste is a solid waste, or combination of solid wastes which, because of quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. |
| Toxic Chemicals | Toxic chemicals are chemicals or chemical categories regulated under Section 313 of EPCRA. Toxic chemicals are listed in Title 40, Part 372.65 of the CFR. |
| List of Lists | U.S. EPA has consolidated a number of the lists described above into one document known as the List of Lists. This document contains the lists of extremely hazardous substances, hazardous substances (as defined by CERCLA), Clean Air Act Section 112(r) substances, and toxic chemicals. It is available on U.S. EPA's website at www.epa.gov/emergencies/tools.htm#lol . |

What Does SARA Title III Cover?

SARA Title III has four major components:

1. Emergency planning (Sections 302 and 303; 40 CFR Part 355)
2. Emergency release notification (Section 304; 40 CFR Part 302)
3. Hazardous chemical inventory (Sections 311 and 312; 40 CFR Part 370)
4. Toxic release inventory (Section 313; 40 CFR Part 372)

The chemicals covered by each of the sections are different, as are the quantities that trigger reporting. Each of these components is discussed below.

■ Emergency Planning (Sections 302 and 303, 40 CFR Part 355)

Off-site emergency response plans contain information that community officials can use at the time of a chemical accident. These plans are developed by LEPCs and address the off-site response to emergency releases from certain facilities in their planning districts that have extremely hazardous substances.

On-site emergency action plans are the responsibility of the facilities and are addressed in 29 CFR 1910.38 of the Occupational Safety and Health Administration's rules. For additional information, review Chapter 19, *Emergency Action Plan*, in this guide.

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There are 356 extremely hazardous substances listed by U.S. EPA in 40 CFR 355, Appendix A. The list includes the threshold planning quantities (minimum limits) for each substance. If your facility has any of the listed chemicals at or above its threshold planning quantity, you must notify the IERC and your LEPC. This one-time notification must be made within 30 days after you first receive a shipment or produce the substance on site that causes your facility to meet or exceed the threshold planning quantity for that substance. The LEPC must then write an off-site emergency response plan for your facility.

This one-time *Form 302 Emergency Planning Notification* (State Form 52016) to IERC, IDEM, and your LEPC must be submitted online through the IDEM Regulatory Services Portal (RSP). Paper submissions for SARA Title III reporting are no longer accepted in Indiana. A list of extremely hazardous substances with associated threshold planning quantities—also known as the consolidated List of Lists—is available on U.S. EPA’s website at www.epa.gov/osweroe1/tools.htm#lol. Information on emergency planning and the RSP is available on IDEM’s website at www.idem.IN.gov/5285.htm or from the Community Right-to-Know program manager at (800) 451-6027.

■ Emergency Release Notification (Section 304, 40 CFR Part 302)

If there is a release of a hazardous substance from your facility into the environment that is equal to or exceeds the minimum reportable quantity set in the regulations, you must immediately (within 15 minutes of discovery) notify the IERC and your LEPC. This requirement covers the 356 extremely hazardous substances as well as over 700 listed hazardous substances (as defined by CERCLA) subject to the emergency release notification requirements under CERCLA Section 130(a)(40 CFR 302.4). See Table 302.4 at www.epa.gov/osweroe1/docs/er/302table01.pdf. Some chemicals are common to both lists. Initial notification can be made by telephone, radio, or in person. Emergency release notification requirements involving transportation incidents can be met by dialing 911, or in the absence of a 911 emergency number, calling the operator.

A written follow-up notice must be submitted to the IERC and LEPC as soon as practicable without interfering with the emergency response actions after the release. The follow-up notice must update information included in the initial notice and provide information on the actual response actions taken and advice regarding medical attention necessary for citizens exposed to the released chemical.

■ Hazardous Chemical Inventory (Sections 311 and 312, 40 CFR Part 370)

Hazardous chemical inventory reporting applies to any facility that is required to maintain a safety data sheet (SDS) in accordance with the Occupational Safety and Health Administration (OSHA) regulations and that stores over 10,000 pounds of a hazardous chemical, or stores an extremely hazardous chemical greater than or equal to the established threshold planning quantity (TPQ). These inventories provide valuable information regarding hazard potential to the first responders in the event of a chemical release emergency.

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What Chemicals Are Included?

Under OSHA regulations, employers must maintain an SDS for any hazardous chemical or substance stored or used in the workplace.

Sections 311 and 312 of SARA Title III, described in 40 CFR Part 370, require that facilities submit initial and annual reports of hazardous chemicals present on-site at any time that exceed certain thresholds. The thresholds refer to the total amount of chemical on site, in storage and in process, at any one given time. The thresholds for reporting under 40 CFR Part 370 follow:

- Extremely hazardous substance = 500 pounds or the threshold planning quantity (TPQ), whichever is less.
- Gasoline at retail gas stations, if all gasoline is stored in compliant underground storage tanks = 75,000 gallons.
- Diesel fuel at retail gas stations, if all diesel fuel is stored in compliant underground storage tanks = 100,000 gallons.
- All other hazardous chemicals (as defined by OSHA) except as stated below = 10,000 pounds.
- There is no threshold for reporting in response to a request from the IERC, LEPC, or local fire department. Regardless of the amount of chemical on site, you must submit a report if you are asked to do so by one of these agencies.

The thresholds are in pounds. So what do you do if your substance is in liquid form and you only know the number of gallons? To convert gallons to pounds, multiply the specific gravity (also called the relative density) of the substance (found on the SDS) by the weight of water (8.34 pounds per gallon) to get the pounds per gallon of the substance:

$$\text{(Specific gravity of substance)} \times \text{(weight of water)} = \text{pounds/gallon substance}$$

For example, the SDS for a certain gasoline lists a specific gravity that ranges from 0.7 to 0.77. To calculate the weight of that gasoline, multiply 0.77 by 8.34 pounds per gallon of water to get 6.42 pounds per gallon of gasoline. One thousand gallons of that gasoline would weigh 6,422 pounds:

$$0.77 \times 8.34 = 6.42 \text{ pounds/gallon gasoline}$$

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What Chemicals Are Excluded?

The following substances are excluded from the hazardous chemical inventory reporting requirements:

- Any substance for which an SDS under the OSHA regulations is not required.
- Any food, food additive, color additive, drug, or cosmetic regulated by the U.S. Food and Drug Administration (U.S. FDA).
- Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
- Any substance that is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.
- Any substance that is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.
- Any substance that is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Initial Report of Hazardous Chemicals (SDS Reporting)

It is especially important for the safety of facility personnel, the community, and the first responders that the first responders (usually the local fire department) know what hazardous chemicals are in your facility. 40 CFR Part 370 requires that facilities submit an initial report of hazardous chemicals (as defined by OSHA) on site in amounts greater than the above thresholds to the IERC, LEPC, and local fire department. This report must be submitted within three months after the chemical threshold is exceeded and is separate from the Emergency Planning Notification required by 40 CFR Part 355.

Initially, the report consists of SDSs or a list of the hazardous chemicals (as defined by OSHA). If the facility owner or operator chooses to submit a list, the list must be grouped by hazard category and must include the chemical or common name of each substance. These hazard categories are:

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

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Annual Report of Hazardous Chemicals (Inventory Reporting)

Section 312, 40 CFR 370.40, requires that facilities with hazardous chemicals (as defined by OSHA) on-site in amounts greater than the threshold planning quantity (TPQ) submit annually an Emergency and Hazardous Chemical Inventory to the IERC, LEPC, and local fire department. The inventory is submitted on a Tier II report form by March 1 of every year. The Tier II report includes information about the amount and storage locations of all hazardous chemicals (as defined by OSHA) that exceeded the applicable thresholds during the previous calendar year.

In Indiana, Tier II reports must be submitted electronically via the Regulatory Services Portal on IDEM's Community Right-to-Know website at www.idem.IN.gov/5285.htm#tier2reqs.

Some LEPCs and fire departments will accept electronic submittals. You may also be required to mail a hard copy of the Tier II report to the LEPC and local fire department. Addresses for the LEPCs can be found on IDEM's website at www.idem.IN.gov/5285.htm#tier2reqs.

Summary of Hazardous Chemicals Covered by SARA Title III Requirements

Hazardous chemicals (as defined by OSHA) are subject to Tier II Emergency and Hazardous Chemical Inventory reporting.

Within the universe of hazardous chemicals (as defined by OSHA) are the extremely hazardous substances (EHS), listed in 40 CFR Appendices A and B. Each EHS has an associated threshold planning quantity for emergency planning and a reportable quantity for release reporting. The EHSs are also subject to Tier II Emergency and Hazardous Chemical Inventory reporting (unless an exemption applies – such as for farming operations) if they are present on-site at their threshold planning quantity or 500 pounds, whichever is less.

Most hazardous substances (as defined by CERCLA) are within the universe of hazardous chemicals (as defined by OSHA) and have associated reportable quantities for release reporting. Some hazardous substances (as defined by CERCLA) fall outside of the OSHA group. OSHA does not require that you maintain an SDS for hazardous waste that is subject to Resource Conservation and Recovery Act (RCRA) regulations, so hazardous waste (as defined by RCRA) is not reportable on the Tier II report. However, if there is a release of the hazardous waste (as defined by RCRA) that is above the listed reportable quantity, that release must be reported under the emergency release notification requirements in 40 CFR Part 302.

When in doubt as to the inclusion of a particular material on a particular list, consult the consolidated List of Lists.

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■ Toxic Release Inventory (Section 313, 40 CFR Part 372)

The Toxic Release Inventory (TRI), or Section 313 of SARA Title III, described in 40 CFR Part 372, requires facilities meeting specific requirements to report information about releases and transfers of toxic chemicals from their facilities. TRI's primary function is to inform communities, citizens, employees and other interested parties of potential chemical releases and environmental waste generated by facilities in their community.

TRI reporting is a federal requirement. Facilities must report release and waste activity of certain chemicals to U.S. EPA by July 1 of each year. U.S. EPA maintains a national database of TRI information that is available to the public. IDEM uses the TRI information to direct pollution prevention and technical assistance outreach efforts. IDEM frequently uses TRI data to work with industries and suggest ways to reduce waste at the source, use less toxic alternatives, and identify opportunities to recycle and reuse materials.

Subject Facilities

There are basically three criteria a facility must meet to be required to report under TRI:

1. The facility must be a manufacturing facility (primarily with the Standard Industrial Classification codes listed below).
 - SIC = 10XX, with the exception of 1011, 1081 and 1094
 - SIC = 12XX, except 1241
 - SIC = 20XX–39XX, with certain exceptions noted in 40 CFR 372.23 (b)
 - Electricity generating facilities (limited to those that burn coal and/or oil for the purpose of generating electricity for distribution into commerce (SIC = 4911, 4931 and 4939)
 - Hazardous waste treatment, storage and disposal facilities (RCRA Subtitle C) (SIC = 4953)
 - Facilities primarily engaged in solvents recovery services on a contract or fee basis (SIC = 5169, 5171 and 7389)
2. The facility must have the equivalent of 10 full-time employees.
3. The facility manufactures or processes or otherwise uses any EPCRA Section 313 toxic chemical in quantities greater than the established threshold in the course of a calendar year.

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Toxic Chemicals and Reporting Thresholds

The most current TRI toxic chemical list contains over 650 reportable chemicals. New toxic materials are added periodically to the list, which is published in 40 CFR 372.65. For more information, please refer to www.epa.gov/tri.

Although a facility must report to TRI if it manufactures or processes 25,000 pounds or more of the chemical or otherwise uses 10,000 pounds or more during the year, if the chemical is persistent, bioaccumulative, and toxic (PBT), a lower threshold applies. Thresholds for PBT chemicals are lower because they are toxic, remain in the environment for long periods of time and build up, or accumulate, in body tissue. Thresholds for PBTs vary; see 40 CFR 372.28 for chemical-specific thresholds.

Toxic Release Inventory Report

If a facility meets the TRI criteria and thresholds, it must submit a Form R – Toxic Release Inventory Report Form by July 1. U.S. EPA provides Toxic Release Inventory reporting forms and instructions at www.epa.gov/tri/reporting_materials/forms/index.html.

For More Information

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| Emergency Planning | Indiana Emergency Response Commission (317) 234-6796 www.IN.gov/dhs/2362.htm |
| Emergency Planning and Community Right-To-Know SARA Title III Reporting and Toxic Release Inventory (TRI) | U.S. Environmental Protection Agency (800) 424-9346 www.epa.gov/emergencies/content/epcra/index.htm U.S. EPA's List of Lists and SARA Title III Reporting Instructions www.epa.gov/tri/reporting_materials/forms/index.html www.idem.IN.gov/prevention/2355.htm |
| Emergency Planning and Community Right-to-Know Emergency Release | Indiana Spill Response Line (888) 233-7745 National Response Center (800) 424-8802 IDEM - Office of Land Quality Community Right-to-Know Coordinator (877) 674-CRTK (2785) |
| Emergency Planning and Community Right-To-Know Tier II Chemical Inventory Reporting | Community Right-to-Know Coordinator (877) 674-CRTK (2785) Regulatory Services Portal www.idem.IN.gov/5964.htm |

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