
The Emergency Planning and Community Right-to-Know Act

On December 4, 1984, methyl isocyanate, an extremely toxic chemical escaped from a Union Carbide chemical plant in Bhopal, India. Thousands died and many more were injured. Some suffered permanent disabilities. Approximately six months later, a similar incident occurred at the Institute, West Virginia. These two events raised concern about local preparedness for chemical emergencies and the availability of information on hazardous chemicals.

In response to these concerns, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA) in 1986. EPCRA 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 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.

What Are SERCs, TERCS, and LEPCs?

The Governor of each state designated a State Emergency Response Commission (SERC). The SERCs, in turn, designated about 3,500 local emergency planning districts and appointed Local Emergency Planning Committees (LEPCs) for each district. The SERC supervises and coordinates the activities of the LEPC, establishes procedures for receiving and processing public requests for information collected under EPCRA, and reviews local emergency response plans.

The Chief Executive Office of the Tribe appoints the Tribal Emergency Response Commissions (TERCs). TERCs have the same responsibilities as the SERCs.

The LEPC membership must include, at a minimum, local officials including police, fire, civil defense, public health, transportation, and environmental professionals, as well as representatives of facilities subject to the emergency planning requirements, community groups, and the media. The LEPCs must develop an emergency response plan, review it at least annually, and provide information about chemicals in the community to citizens.

What Does EPCRA Cover?

EPCRA has four major provisions:

- Emergency planning (sections 301-303),
- Emergency release notification (section 304),
- Hazardous chemical storage reporting requirements (sections 311-312), and
- Toxic chemical release inventory (section 313).

Information collected from these four requirements helps states and communities develop a broad perspective of chemical hazards for the entire community, as well as for individual

facilities. Regulations implementing EPCRA are codified in Title 40 of the Code of Federal Regulations, parts 350 to 372. The chemicals covered by each of the sections are different, as are the quantities that trigger reporting. Table 1 summarizes the chemicals and thresholds.

What Are Emergency Response Plans (Sections 301-303)?

Emergency Response plans contain information that community officials can use at the time of a chemical accident. Community emergency response plans for chemical accidents were developed under section 303. LEPCs are required to update these plans annually. The plans must:

- Identify facilities and transportation routes of extremely hazardous substances;
- Describe emergency response procedures, on and off site;
- Designate a community coordinator and facility coordinator(s) to implement the plan;
- Outline emergency notification procedures;
- Describe how to determine the probable affected area and population by releases;
- Describe local emergency equipment and facilities and the persons responsible for them;
- Outline evacuation plans;
- Provide a training program for emergency responders (including schedules); and,
- Provide methods and schedules for exercising emergency response plans.

Planning activities of LEPCs and facilities initially focused on, but were not limited to, the 406 extremely hazardous substances (EHSs) listed by EPA in 1987 (now currently 355 chemicals). The list includes the threshold planning quantities (minimum limits) for each substance. Any facility that has EHS at or above its threshold planning quantity must notify the State Emergency Response Commission (SERC) or the Tribal Emergency Response Commission (TERC) and Local Emergency Planning Committee (LEPC) within 60 days after they first receive a shipment or produce the substance on site.

What Are the Emergency Notification Requirements (Section 304)?

Facilities must immediately notify the LEPC and the SERC or the TERC if there is a release into the environment of a hazardous substance that is equal to or exceeds the minimum reportable quantity set in the regulations. This requirement covers the 355 extremely hazardous substances, 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. 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 it is an extremely hazardous substance;
- 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.

A written follow-up notice must be submitted to the SERC or the TERC and LEPC as soon as practicable after the release. The follow-up notice must update information included in the initial notice and provide information on actual response actions taken and advice regarding medical attention necessary for citizens exposed.

What Are the Community Right-to-know Requirements (Sections 311 and 312)?

Under Occupational Safety and Health Administration (OSHA) regulations, employers must maintain a material safety data sheet (MSDS) for any hazardous chemicals stored or used in the work place. Approximately 500,000 products are required to have MSDSs.

Section 311 requires facilities that have MSDSs for chemicals held above certain threshold quantities to submit either copies of their MSDSs or a list of these chemicals to the SERC or TERC, LEPC, and local fire department. If the facility owner or operator chooses to submit a list of chemicals, the list must include the chemical or common name of each substance and must identify the applicable hazard categories. These hazard categories are:

Physical Hazards	Health Hazards
Flammable (gases, aerosols, liquids, or solids)	Carcinogenicity
Gas under pressure	Acute toxicity (any route of exposure)
Explosive	Reproductive toxicity
Self-heating	Skin Corrosion or Irritation
Pyrophoric (liquid or solid)	Respiratory or Skin Sensitization
Oxidizer (liquid, solid, or gas)	Serious eye damage or eye irritation
Organic peroxide	Specific target organ toxicity (single or repeated exposure)
Self-reactive	Germ cell mutagenicity
In contact with water emits flammable gas	Aspiration Hazard
Corrosive to metal	Hazard Not Otherwise Classified (HNOC)
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If a list is submitted, the facility must submit a copy of the MSDSs for any chemical on the list upon request by the LEPC.

Facilities that start using a hazardous chemical or increase the quantity to exceed the thresholds must submit MSDSs or a list of MSDSs chemicals within three months after they become covered. Facilities must provide a revised MSDS to update the original MSDS or list if significant new information is discovered about the hazardous chemical.

Facilities covered by section 311 must submit annually an Emergency and Hazardous Chemical Inventory Form to the LEPC, the SERC or the TERC, and the local fire department as required under section 312. Facilities provide either a Tier I or Tier II inventory form. Tier I inventory form include the following aggregate information for each applicable hazard category:

- An estimate (in ranges) of the maximum amount of hazardous 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 hazardous chemicals in each category; and,

- The general location of hazardous chemicals in each category. The Tier II inventory form contains basically the same information as the Tier I, but it must list the specific chemicals. Tier II inventory form provide the following information for each chemical:
- 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 and the average daily amount;
- 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.

Many states now require Tier II inventory form or the state equivalent including electronic reporting under state law. Section 312 information must be submitted on or before March 1 each year for information on chemicals present at the facility in the previous year. The information submitted under sections 311 and 312 is available to the public from LEPCs and SERCs or TERCs.

What is the Toxics Release Inventory (Section 313)?

Section 313 of EPCRA established the Toxics Release Inventory. TRI tracks the management of certain toxic chemicals that pose a threat to human health and the environment. Facilities in different industry sectors must annually report how much of each chemical they managed through recycling, energy recovery, treatment and environmental releases. TRI reporting forms must be submitted to EPA and the appropriate state or tribe by July 1 of each year. These forms cover environmental releases and other management of toxic chemicals that occurred during the previous calendar year.

The information submitted by facilities is compiled in the Toxics Release Inventory and made available to the public through the TRI website: <https://www.epa.gov/toxics-release-inventory-tri-program>. TRI helps support informed decision-making by industry, government, non-governmental organizations and the public. TRI includes information about:

- On-site releases (including disposal) of toxic chemicals to air, surface water and land;
- On-site recycling, treatment and energy recovery associated with TRI chemicals;
- Off-site transfers of toxic chemicals from TRI facilities to other locations;
- Pollution prevention activities at facilities;
- Releases of lead, mercury, dioxin and other persistent, bioaccumulative and toxic (PBT) chemicals; and
- Facilities in a variety of industry sectors (including manufacturing, metal mining and electric power generation) and some federal facilities.

A complete list of covered facility sectors is available online: <https://www.epa.gov/toxics-release-inventory-tri-program/my-facilitys-six-digit-code-tri-coverd-industry>

Some of the ways TRI data can be used include:

- Identifying sources of toxic chemical releases;
- Beginning to analyze potential toxic chemical hazards to human health and the environment; and
- Encouraging pollution prevention at facilities.

Table 1: EPCRA Chemicals and Reporting Thresholds

Chemicals Covered	Section 302 355 Extremely Hazardous Substances	Section 304 >1,000 substances	Sections 311/312 Approximately 800,000 hazardous chemicals	Section 313 > 650 Toxic Chemicals and categories
Thresholds	Threshold Planning Quantity 1-10,000 pounds on site at any one time	Reportable quantity, 1-5,000 pounds, released in a 24-hour period	500 pounds or TPQ whichever is less for EHSs; gasoline greater than or equal to 75,000 gallons (all grades combined)*; diesel greater than or equal to 100,000 gallons (all grades combined)*; 10,000 pounds for all other hazardous chemicals	25,000 pounds per year manufactured or processed; 10,000 pounds a year otherwise used; persistent bioaccumulative toxics have lower thresholds

*These thresholds are only applicable for gasoline and diesel present at retail gas stations in tank(s) entirely underground and was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements at 40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281.

What Else Does EPCRA Require?

Trade Secrets. EPCRA section 322 allows facilities to file trade secrets in their reports under EPCRA sections 303, 311, 312, and 313. Only the specific chemical identity may be claimed as a trade secret, though a generic class for the chemical must be provided. The criteria a facility must meet to claim a chemical identity as a trade secret are in 40 CFR part 350. A facility cannot claim trade secrets under EPCRA section 304.

Even if specific chemical identity information can be legally withheld from the public, EPCRA section 323 allows the information to be disclosed to health professionals who need the information for diagnostic and treatment purposes or local health officials who need the information for prevention and treatment. In non-emergency cases, the health professional must sign a confidentiality agreement with the facility and provide a written statement of need. During a medical emergency, the health professional may obtain the specific chemical identity from the facility for treatment.

Any person may challenge trade secret claims by petitioning EPA. The Agency must then review the claim and rule on its validity.

EPCRA Penalties. EPCRA section 325 allows for civil and administrative penalties ranging from up to \$21,916 - \$164,367¹ per violation per day when facilities fail to comply with the reporting requirements. Criminal penalties up to \$50,000 or five years in prison apply 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 apply to any person who knowingly and willfully discloses any information entitled to protection as a trade secret.

Citizens Suits. EPCRA section 326 allows citizens to initiate civil actions against EPA, SERCs, and the owner or operator of a facility for failure to meet the EPCRA requirements. A SERC or TERC, LEPC, and state or local government may institute actions against facility owner or operator for failure to comply with EPCRA requirements. In addition, states may sue EPA for failure to provide trade secret information.

Reporting Schedules Section

- 302** One-time notification to SERC/TERC and LEPC.
- 304** Each time a release above a reportable quantity of an EHS or CERCLA Hazardous Substance occurs to LEPC and SERC or TERC.
- 311** One-time submission of MSDS or list of hazardous chemicals. An update is required for new chemicals or new information about chemicals already submitted to the SERC or TERC, LEPC, and the fire department with jurisdiction over the facility.
- 312** Annually, by March 1 to SERC or TERC, LEPC, and the fire department with jurisdiction over the facility.
- 313** Annually, by July 1, to EPA, states and tribes.

Where Can You Find EPCRA Information?

Regulations, policy memorandums, answers to frequently asked questions related to EPCRA sections 301 to 312 can be obtained from: <https://www.epa.gov/epcra> MSDSs, hazardous chemical inventory forms, follow-up emergency notices, and the emergency response plan are available from the SERC or the TERC and LEPC.

EPA has compiled a list of all chemicals covered under these regulations into a single list and published them as Consolidated List of Lists, which is available at: <https://www.epa.gov/epcra/epcracerclacaa-ss112r-consolidated-list-lists-march-2015-version>

Each year, EPA publishes the TRI National Analysis, a report summarizing the most recent TRI data. TRI data are available through a variety of online tools and applications at <https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-and-tools>. Users can search TRI data by year, facility name, geographic location, chemical of interest and industry sector.

¹ The penalty amounts described have been adjusted by the 2017 Civil Monetary Penalty Inflation Adjustment Rule, mandated by the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461 note, Pub. L. 114-74 (see <https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf>). See also 81 Fed. Reg. 43,091 (July 1, 2016).

Initial emergency release notifications made to the National Response Center or EPA are available online: <http://nrc.uscg.mil>

A list of SERCs is available online: <https://www.epa.gov/epcra/state-emergency-response-commissions-contacts>

For information on chemical emergency preparedness and prevention in Indian country, visit: <https://www.epa.gov/rmp/chemical-emergency-preparedness-and-prevention-indian-country>

Are There Other Laws That Provide Similar Information?

The Oil Pollution Act (OPA) of 1990 includes national planning and preparedness provisions for oil spills that are similar to EPCRA provisions for extremely hazardous substances. Plans are developed at the local, state and federal levels. The OPA plans offer an opportunity for LEPCs to coordinate their plans with area and facility oil spill plans covering the same geographical area.

The 1990 Clean Air Act Amendments require the EPA and OSHA to issue regulations for chemical accident prevention. Facilities that have certain chemicals above specified threshold quantities are required to develop a risk management program to identify and evaluate hazards and manage those hazards safely. Facilities subject to EPA's Chemical Accident Prevention regulations must submit a risk management plan (RMP) summarizing its program.

For More Information

Contact the EPCRA, RMP & Oil Information Center: 800-424-9346 or 703-348-5070 in the Metropolitan DC area
Monday - Friday, 10:00 AM to 5:00 PM, EST

For EPA EPCRA Regional contacts, visit: <https://www.epa.gov/epcra/epa-regional-epcramp-contacts>

For more information about the TRI Program, visit: <https://www.epa.gov/toxics-release-inventory-tri-program>