

Emergency Planning and Community Right-to-Know Act (EPCRA)

Background

Title III of the Superfund Amendments and Reauthorization Act (SARA) Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 was created to help communities plan for chemical emergencies. It also requires industry to report on the storage, use and releases of hazardous substances to federal, state, and local governments, including the Local Emergency Planning Committee (LEPC) and the State Emergency Response Commission (SERC). EPCRA requires state and local governments to use this information to prepare for and protect their communities from potential risks. 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.

The key provisions of EPCRA are:

- **Sections 301 to 303: Emergency Planning**

Local governments are required to prepare chemical emergency response plans, and to review plans at least annually. State governments are required to oversee and coordinate local planning efforts. Facilities that maintain Extremely Hazardous Substances (EHS) on-site in quantities greater than corresponding threshold planning quantities (TPQs) must cooperate in emergency plan preparation.

- **Section 304: Emergency Notification**

Facilities must immediately report accidental releases of EHSs and “hazardous substances” defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Any releases of these substances in quantities greater than their corresponding Reportable Quantities (RQs) must be reported to state and local officials. This includes over 1,000 hazardous substances listed in 40 CFR 355 and 40 CFR 302.4.

- **Sections 311 and 312 (Tier II): Community Right-to-Know Requirements**

Facilities handling or storing any hazardous chemicals must submit Safety Data Sheets (SDSs) to state and local officials and local fire departments. Hazardous chemicals are defined under the Occupational Safety and Health Act and its implementing regulations. SDSs describe the properties and health effects of these chemicals. SDSs for a number of chemicals can be downloaded from the Messer Americas website at: <https://messersds.thewerco.com/external/private/search.aspx?guilang=EN>.

Under Section 312, facilities must also submit annually, by March 1, the Emergency and Hazardous Chemical Inventory (known as the Tier II form) for these chemicals, to state and local officials and local fire departments. Facilities must report if the chemicals were present at the facility during the previous calendar year above the following thresholds:

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

Note that per Section 311(e) of EPCRA, the following substances are excluded from the Tier II reporting:

- Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
- 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 to the extent it 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 to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and
- Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

- **Section 313: Toxics Release Inventory (TRI)**

Facilities must complete and submit a toxic chemical release inventory form (Form R) annually by July 1 for the previous calendar year. Form R must be submitted for each of the over 600 TRI chemicals that are manufactured or otherwise used above the applicable threshold quantities. This section applies to facilities that meet all three of the following criteria:

- The facility is included in a North American Industry Classification System (NAICS) TRI-covered industry sector.
- The facility has 10 or more full-time employees.
- The facility manufactures, processes, or otherwise uses the TRI-listed chemical in the quantities above threshold levels in a given year.

Note that the above is a summary of the TRI applicability criteria. See EPA's TRI website (<https://www.epa.gov/toxics-release-inventory-tri-program>) for additional information and clarification on the specific applicability requirements.

- **Section 322: Trade Secrets**

Facilities can withhold the specific chemical identity from the reports filed under sections 303, 311, 312 and 313 of EPCRA if the facilities submit a claim with substantiation to EPA.

Note that states may have different and additional requirements regarding EPCRA, as well as specific filing methods. Note also that some states may require payment of fees along with the Tier II reports. Always confirm requirements with your local state agency.

Penalties

Sections 325 and 326 of SARA Title III outline penalties for non-compliance. Civil and administrative penalties range from up to \$21,916 - \$164,367 (per 2017 adjustments) and criminal penalties are up to \$50,000 or five years in prison.

Additional Information

For information on the products and volumes supplied to your facility by Messer, please contact us at:
<https://www.messer-us.com/support>.

Following is a list of Chemical Abstract Service (CAS) numbers, hazard categories and reporting thresholds that could be needed for reporting purposes:

Product	CAS Number	Hazard Categories	Reporting Threshold		
			Weight (Pounds)	Liquid (Gallons)	Gas (Std Cu. Ft.)
Argon	7440-37-1	-Gas Under Pressure -Simple Asphyxiant	10,000	860	96,700
Carbon Dioxide	124-38-9	-Gas Under Pressure -Simple Asphyxiant	10,000	1,180	87,400
Helium	7440-59-7	-Gas Under Pressure -Simple Asphyxiant	10,000	9.590	960,000
Hydrogen	1333-74-0	-Flammable -Gas Under Pressure -Simple Asphyxiant	10,000	16,930	1,920,000
Nitrogen	7727-37-9	-Gas Under Pressure -Simple Asphyxiant	10,000	1,480	138,000
Oxygen	7782-44-7	-Oxidizer -Gas Under Pressure	10,000	1,050	120,000

Other Useful Links

- EPA's EPCRA Page: <https://www.epa.gov/epcra>
- EPA's EPCRA Fact Sheet: https://www.epa.gov/sites/production/files/2017-08/documents/epcra_fact_sheet_overview_8-2-17.pdf
- EPA's EPCRA Emergency Release Notification Requirements: <https://www.epa.gov/epcra/epcra-section-304>
- EPA's Tier II Inventory Form instructions: https://www.epa.gov/sites/production/files/2017-06/documents/tier_ii_inventory_form_instructions_2017.pdf
- EPA's TRI Page: <https://www.epa.gov/toxics-release-inventory-tri-program>
- LEPC Contacts: <https://www.epa.gov/epcra/local-emergency-planning-committees>
- SERC Contacts: <https://www.epa.gov/epcra/state-emergency-response-commissions>
- State specific reporting: <https://www.epa.gov/epcra/state-tier-ii-reporting-requirements-and-procedures>