

PUBLICATION

Got Chemicals? EPA's March 1 EPCRA Filings Deadline and the New TRI Rule

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If your company has certain chemicals in quantities that trigger reporting requirements under Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), don't forget that your annual Tier II reports are due by March 1. In addition, EPA has recently revised EPCRA's Section 313 requirements, and the new TRI rule may apply to you.

EPCRA was designed to ensure that emergency responders have vital information regarding the chemicals present at facilities in order to help them prepare for emergencies and protect the public. If you use or store chemicals at your facility, three (3) specific sections of EPCRA may apply to you: 311, 312 and 313.

Section 311

The Occupational Safety and Health Administration (OSHA) regulations require employers to maintain material safety data sheets (MSDS) for hazardous chemicals in the workplace. Section 311 of EPCRA requires facilities to submit copies of their MSDSs or a list of the chemicals that are present at the facility at any one time in an amount equal to or greater than 10,000 pounds. For chemicals that have been deemed "Extremely Hazardous Chemicals" by OSHA, reporting is required if the chemicals are present at the facility at any one time in an amount equal to or greater than 500 pounds or the threshold planning quantity (TPQ) for that chemical, whichever is less. This list should be consulted when determining the threshold reporting requirement for any covered chemical at your facility. In determining whether reporting is required, you should also add all quantities of the substance present in mixtures and elsewhere in your facility.

Section 311 submissions must be provided to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the local fire department. This is a one-time filing, but it must be revised and updated within 90 days of obtaining new chemicals or information regarding existing chemicals.

Section 312

Under section 312, facilities must prepare and submit on or before every March 1, an emergency and hazardous chemical inventory form, called a Tier II form, to the SERC, LEPC and the local fire department. The thresholds for submitting these Tier II forms under Section 312 are identical to the thresholds listed above for Section 311. However, since Tier II reports are submitted on a yearly basis, the determination is made based upon whether the threshold quantity was present at your facility at any given time during the preceding calendar year.

Section 313

Section 313, commonly referred to as the Toxics Release Inventory (TRI), requires certain facilities to submit a Toxic Chemical Release Inventory Form, known as Form R, to EPA and the state on or before July 1 of each year. The requirement to submit a report under this section is triggered by whether the facility falls within certain SIC codes and whether the facility uses a substance identified as a toxic chemical by EPA and releases it into the environment. (Note: A chemical may be considered "released" even if it is properly recycled, treated or disposed.) The substances identified by EPA as toxic chemicals for Form R reporting purposes are contained in a specific list in the regulations promulgated under Section 313 and are different from those chemicals covered by Sections 311 and 312 discussed above. While the typical reporting threshold for

chemicals covered under Section 313 is 10,000 pounds, the regulations also provide lower thresholds for separately listed chemicals of special concern. As such, this list should be consulted when determining the threshold reporting requirement for any covered chemical at your facility.

On December 18, 2006, EPA's TRI Burden Reduction Rule became final. This rule expands eligibility for use of the Form A Certification Statement in lieu of the more detailed Form R. Form A is now available for certain chemicals and release quantities. For example, facilities may use Form A for some "Persistent, Bioaccumulative and Toxic" chemicals when there have been no releases or other disposal into the environment and the total amount managed by treatment, energy recovery and/or recycling does not exceed 500 pounds. This new rule is intended to improve environmental management by providing incentives to eliminate or reduce releases and to encourage a shift from less desirable waste management practices (i.e., releases and other disposal) to preferred practices, such as recycling and treatment. However, facilities to which this new rule may apply should be aware that the current Congress is opposed to this new rule, viewing it as a loosening of EPCRA's requirements, and may attempt to stop its implementation. If you intend to use the new Form A for your July 1, 2007, filing, you should confirm the rule's status prior to your filing.