

§ 370.1

AUTHORITY: Sections 302, 311, 312, 322, 324, 325, 327, 328, and 329 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (Pub. L. 99-499, 100 Stat. 1613, 42 U.S.C. 11002, 11021, 11022, 11042, 11044, 11045, 11047, 11048, and 11049).

SOURCE: 73 FR 65478, Nov. 3, 2008, unless otherwise noted.

Subpart A—General Information

§ 370.1 What is the purpose of this part?

(a) This part (40 CFR part 370) establishes reporting requirements for providing the public with important information on the hazardous chemicals in their communities. Reporting raises community awareness of chemical hazards and aids in the development of State and local emergency response plans. The reporting requirements established under this part consist of Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS) reporting and inventory reporting.

(b) This part is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this part establishes enforceable legal requirements. Information considered non-binding guidance under EPCRA is indicated in this regulation by the word “note” and a smaller typeface. Such notes are provided for information purposes only and are not considered legally binding under this part.

[73 FR 65478, Nov. 3, 2008, as amended at 81 FR 38108, June 13, 2016]

§ 370.2 Who do “you,” “I,” and “your” refer to in this part?

Throughout this part, “you,” “I,” and “your” refer to the owner or operator of a facility.

§ 370.3 Which section contains the definitions of the key words used in this part?

The definitions of key words used in this part are in § 370.66. It is important to read the definitions for key words because the definition explains the word’s specific meaning in the regulations in this part.

40 CFR Ch. I (7–1–18 Edition)

Subpart B—Who Must Comply

§ 370.10 Who must comply with the hazardous chemical reporting requirements of this part?

(a) You must comply with the reporting requirements of this part if the Occupational Safety and Health Administration’s (OSHA) Hazard Communication Standard (HCS) require your facility to prepare or have available a Material Safety Data Sheet (MSDS) (or Safety Data Sheet (SDS)) for a hazardous chemical and if either of the following conditions is met:

(1) A hazardous chemical that is an Extremely Hazardous Substance (EHS) is present at your facility at any one time in an amount equal to or greater than 500 pounds (227 kg—approximately 55 gallons) or the Threshold Planning Quantity (TPQ), whichever is lower. EHSs and their TPQs are listed in Appendices A and B of 40 CFR part 355.

(2) A hazardous chemical that is not an EHS is present at your facility at any one time in an amount equal to or greater than the threshold level for that hazardous chemical. Threshold levels for such hazardous chemicals are:

(i) For any hazardous chemical that does not meet the criteria in paragraph (a)(2)(ii) or (iii) of this section, the threshold level is 10,000 pounds (or 4,540 kg).

(ii) For gasoline at a retail gas station (For purposes of this part, retail gas station means a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.), the threshold level is 75,000 gallons (approximately 283,900 liters) (all grades combined). This threshold is only applicable for gasoline that was 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.

(iii) For diesel fuel at a retail gas station (For purposes of this part, retail gas station means a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for

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motor vehicle use on land.), the threshold level is 100,000 gallons (approximately 378,500 liters) (all grades combined). This threshold is only applicable for diesel fuel that was 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.

(b) The threshold level for responding to the following requests is zero.

(1) If your LEPC requests that you submit an MSDS (or SDS) for a hazardous chemical for which you have not submitted an MSDS (or SDS) to your LEPC; or

(2) If your LEPC, SERC, or the fire department with jurisdiction over your facility requests that you submit Tier II information.

[73 FR 65478, Nov. 3, 2008, as amended at 81 FR 38108, June 13, 2016]

§ 370.11 [Reserved]

§ 370.12 What hazardous chemicals must I report under this part?

(a) You must report any hazardous chemical for which you are required to prepare or have available an MSDS (or SDS) under OSHA HCS that is present at your facility equal to or above the applicable threshold specified in § 370.10. (Specific exemptions from reporting are in § 370.13.)

(b) The EPA has not issued a list of hazardous chemicals subject to reporting under this part. A substance is a hazardous chemical if it is required to have an MSDS (or SDS) and meets the definition of hazardous chemical under the OSHA regulations found at 29 CFR 1910.1200(c).

[73 FR 65478, Nov. 3, 2008, as amended at 81 FR 38108, June 13, 2016]

§ 370.13 What substances are exempt from these reporting requirements?

You do not have to report substances for which you are not required to have an MSDS (or SDS) under the OSHA regulations, or that are excluded from the definition of hazardous chemical under EPCRA section 311(e). Each of the following substances are excluded under EPCRA section 311(e):

(a) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(b) 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.

(c) Any substance to the extent it is used:

(1) 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. Present in the same form and concentration as a product packaged for distribution and use by the general public means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;

(2) In a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual; or

(3) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

[73 FR 65478, Nov. 3, 2008, as amended at 81 FR 38108, June 13, 2016]

§ 370.14 How do I report mixtures containing hazardous chemicals?

(a) For a mixture containing a hazardous chemical, use the following table to determine if a reporting threshold is equaled or exceeded, and to determine how to report: