ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 355 and 370

[EPA–HQ–SFUND–1998–0002; FRL–8733–5]

RIN 2050–AE17

Emergency Planning and Community Right-to-Know Act; Amendments to Emergency Planning and Notification; Emergency Release Notification and Hazardous Chemical Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing changes to the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations that were proposed on June 8, 1998. EPA proposed four major revisions and provided draft guidance on various reporting options that States and local agencies may wish to consider in implementing the hazardous chemical reporting requirements. This action addresses only those changes proposed under the heading ''*Other Regulatory Changes*'' described in the preamble to the 1998 proposed rule. This final action includes minor revisions to the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations, codifying statutory requirements, and clarifying certain interpretations and policy statements that EPA has provided to the regulated community. This final action does not affect public access to any of the information provided under the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations. In addition to the regulatory changes, the Agency is finalizing the plain language format of the regulations. Each section in these regulations will be re-numbered and tables will be added for further clarification. Improving the clarity of the regulatory requirements will make the rule easier to understand and improve compliance.

DATES: This final rule is effective on December 3, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–SFUND–1998–0002. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20004; telephone number: (202) 564–8019; fax number: (202) 564–2620; e-mail address: *jacob.sicy@epa.gov.* Also contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or (703) 412–9810 (in the Washington DC, metropolitan area). The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672 or (703) 412–3323 (in the Washington, DC, metropolitan area.) You may wish to visit the Office of Emergency Management (OEM) Internet site at *http://www.epa.gov/emergencies.*

SUPPLEMENTARY INFORMATION: Here are the contents of today's preamble.

I. General Information

A. Who is Affected by This Rule?

Entities that would be affected by this rule are those organizations and facilities subject to the Emergency Planning and Community Right-to-Know Act (EPCRA) and its implementing regulations found in 40 CFR parts 355 and 370. To determine whether your facility is affected by this action, you should carefully examine the sections below that explain who must comply with the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What is the Statutory Authority for This Rule?

This final rule is being issued under EPCRA, which was enacted as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499), (SARA). The Agency relies on EPCRA section 328 for general rulemaking authority.

C. What is the Background of This Rulemaking?

Title III of SARA (EPCRA) establishes authorities for emergency planning and preparedness, emergency release notification reporting, community right-to-know reporting, and toxic chemical release reporting. It is intended to encourage State and local planning and preparedness for releases of extremely hazardous substances and to provide the public, local governments, fire departments and other emergency officials with information concerning

chemical releases and the potential chemical risks in their communities. The implementing regulations for emergency planning, emergency release notification and the chemicals subject to these regulations (Extremely Hazardous Substances) are codified in 40 CFR part 355. The implementing regulations for community right-to-know reporting (or hazardous chemical reporting) are codified in 40 CFR part 370.

On June 8, 1998, EPA published a proposed rule (63 FR 31268) to streamline the reporting requirements under EPCRA, in particular, sections 311 and 312. EPA proposed four major revisions and provided draft guidance on various reporting options that State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs), and fire departments may wish to consider as they implement EPCRA sections 311 and 312. The four proposed revisions were: (1) Higher threshold levels for reporting gasoline and diesel fuel at retail gas stations; (2) relief from routine reporting for substances with minimal hazards and minimal risks; (3) relief from routine reporting for sand, gravel and rock salt; and (4) ''Other Regulatory Changes,'' such as: reporting of mixtures; removing the Tier I and Tier II inventory forms and instructions from the CFR, as well as some minor revisions to the forms and instructions; and some minor changes to the emergency planning and emergency release notification regulations (40 CFR part 355).

EPA finalized higher threshold levels for reporting gasoline and diesel fuel at retail gas stations on February 11, 1999 (64 FR 7031). In today's action, the Agency is finalizing only items in (4) above—*''Other Regulatory Changes,''* as discussed in section IV.B of the preamble to the 1998 proposed rule. The remaining two proposed revisions [(2) and (3) above] and the draft guidance related to EPCRA sections 311 and 312 for States and local government agencies may be finalized at a later date.

II. What are the Regulatory Changes in This Rule?

This section of the notice provides a brief summary of this final rule. Specifically, the changes in this final action include: (1) Finalizing some of the proposed revisions on applying threshold quantity and the reporting of mixtures under EPCRA sections 311 and 312; (2) removing the Tier I and II inventory forms and instructions from the CFR, as well as making some minor changes to the forms and instructions; and (3) codifying certain existing policies and interpretations in 40 CFR parts 355 and 370. Today's action also: (1) Re-writes the regulations in 40 CFR parts 355 and 370 in plain language, using a question and answer format; (2) re-numbers and re-organizes each section in 40 CFR parts 355 and 370; and (3) adds tables in order to improve the clarity and understanding of certain reporting requirements.

The proposed changes to determining whether the thresholds have been met or exceeded and reporting of mixtures under EPCRA sections 311 and 312 received the most comments. Commenters generally supported the regulatory changes discussed in the June 1998 preamble. Details on the significant comments received on mixture reporting and certain other aspects of the final rule are provided below. For a more complete discussion of all comments received and the Agency's response, please see the *Summary of Comments and Response* document that is in the Docket to today's rule as specified in the beginning of this notice.

A. Reporting of Mixtures Under EPCRA Sections 311 and 312 (40 CFR Part 370)

1. Background of the Proposed Revisions for the Reporting of Mixtures

Sections 311 and 312 of EPCRA apply to any facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for any hazardous chemical under the Occupational Safety and Health Administration (OSHA) and its implementing regulations. EPCRA Sections 311(a)(3) and 312(a)(3) contain the statutory provisions for reporting of mixtures containing hazardous chemicals. These provisions state that for a mixture that is a hazardous chemical, a facility may meet the reporting requirements of section 311 of EPCRA by submitting an MSDS for the mixture or an MSDS for each hazardous chemical component in the mixture. In lieu of submitting an MSDS for the mixture, a facility may submit a list that contains the mixture or the hazardous chemical components in the mixture. Section 311(a)(3) also states that if more than one mixture at a facility contains the same hazardous chemical, only one MSDS or one entry on the list of chemicals is necessary for that hazardous chemical. Similarly, a facility may meet the reporting requirements of section 312 by providing inventory information only for the mixture or for each hazardous chemical component in the mixture. In addition, section 312(a)(3) states that if more than one mixture at a facility contains the same hazardous chemical, only one listing on the inventory form is necessary for that hazardous chemical.

OSHA may require a facility owner or operator to prepare or have available an MSDS for a pure chemical, a mixture and/or its hazardous components. Therefore, owners and operators of facilities subject to EPCRA sections 311 and 312 may have MSDSs for pure chemicals, mixtures, and/or for individual hazardous chemical components in those mixtures. For facilities that have only pure chemicals on site, determining if the total amount of a hazardous chemical is at or above the reporting threshold is straightforward. However, in many cases, facilities have mixtures that contain hazardous chemical components, including both extremely hazardous substances (EHSs) and non-EHSs. Before the effective date of this final rule, 40 CFR part 370 specified how to determine if a reporting threshold has been met or exceeded for mixtures that contain EHSs. If the threshold is met, 40 CFR part 370 provided options to report either the hazardous chemical components or the mixture itself. 40 CFR part 370 did not provide options for determining if the reporting threshold has been met or exceeded for mixtures containing non-EHS hazardous chemical components. In the proposed rule, the Agency proposed to add requirements and/or options for determining if the reporting threshold has been met or exceeded and for reporting mixtures that contain non-EHS hazardous chemical components.

Although prior to the effective date of this final rule, the regulations in 40 CFR part 370 did not include requirements and/or options for determining if non-EHS hazardous chemical components in mixtures are at or above the reporting threshold, the Agency provided guidance on this issue in the preamble to the July 26, 1990 (55 FR 30632) final rule. In that preamble, EPA specified that, while aggregation of non-EHS hazardous chemical components present in mixtures is not required for determining if the reporting threshold is met, the facility may choose to aggregate if they wish to report by hazardous chemical components rather than reporting as mixtures. The July 1990 rule finalized the reporting thresholds under sections 311 and 312 and established uniform effective dates for all facilities subject to reporting under sections 311 and 312. Other revisions included finalizing the revision of the definition of the term ''facility'' to include subsurface operations, the implementation of all sections of EPCRA by Indian Tribes on Indian lands

as well as the treatment of mixtures in threshold calculations.

2. Summary of the Proposed Revisions for the Reporting of Mixtures

In the June 1998 proposed rule, the Agency proposed a number of revisions to 40 CFR 370.28 for applying threshold quantities and the reporting of mixtures under EPCRA sections 311 and 312. Specifically, the proposed revisions to § 370.28 were:

(1) Removing the phrase ''the total quantity of the mixture'' from § 370.28(b)(2);

(2) Adding a provision to clarify that, when determining the total quantity of an EHS present at a facility, the quantity of that substance present in a mixture must be included even if the total quantity of that particular mixture is also being counted toward the threshold level for that mixture;

(3) Adding a provision for applying the threshold quantity to a hazardous chemical component in a mixture when that hazardous chemical component is *not* an EHS; and

(4) Adding a provision for applying the threshold quantity to a non-EHS hazardous chemical when that chemical is present both by itself and as a component in a mixture.

EPA requested comments on these proposed revisions, as well as on the re-writing of the mixture reporting section in plain language, using a question and answer format. EPA received a total of 38 comments from industry, State and local governments, trade associations and environmental groups. In general, commenters supported codifying existing policies for the reporting of mixtures. However, several commenters opposed two of the proposed revisions. An overview of the comments received on each of the proposed revisions and the final actions being taken by the Agency are discussed below.

3. Organizational Changes to the Reporting of Mixtures in This Final Action

In addition to the four proposed revisions described above, EPA proposed re-organizing and re-numbering 40 CFR part 370. Commenters provided general support for re-organizing and re-numbering 40 CFR part 370. As stated in the proposed rule, § 370.28 is re-numbered as § 370.14. A table is also provided in § 370.14(a) to clarify the requirements and/or provide options to determine if reporting thresholds have been met or exceeded for mixtures containing EHSs and non-EHS hazardous chemical components. The table also shows how to report mixtures that contain EHSs and non-EHS hazardous chemical components. The basic reporting option stated in § 370.28(a) is now in the table in § 370.14(a). This provision states that the owner or operator of a facility may meet the MSDS and Tier I information reporting requirements for mixtures containing hazardous chemicals by either: (1) Reporting with respect to each component in the mixture that is a hazardous chemical; or (2) reporting with respect to the mixture itself, provided that the mixture itself is a hazardous chemical.

Section 370.28(a) also stated that, where practicable, the reporting of mixtures by a facility be consistent for both inventory and MSDS reporting. Although we proposed that the new section 370.14(d) would restate this requirement, EPA has re-numbered this provision as 370.14(b) to provide further clarity and improve the flow of the regulations.

4. Final Action on Proposed Revision (1): Removing the Phrase ''the Total Quantity of the Mixture'' From § 370.28(b)(2)

In the process of re-organizing and re-numbering all the sections in 40 CFR part 370, some of the requirements were consolidated into one section. As a result, the Agency proposed to remove the phrase ''the total quantity of the mixture'' from § 370.28(b)(2). This requirement states that if the facility chooses to report the mixture, then the total quantity of the mixture present at the facility shall be reported. Since the table in new section 370.14(a) directs the reader to §§ 370.30 and 370.40, which already provides this information, EPA believed that this phrase did not need to be repeated. EPA received five comments opposing this revision. Specifically, the commenters argued that the sections that are cross-referenced, §§ 370.30 and 370.40, do not adequately address how mixtures should be reported and thus, recommended that the phrase ''the total quantity of the mixture'' should be retained for clarity. Based on these comments, EPA has decided to retain this language in the final rule. As noted above, the language is now in the table in § 370.14(a).

5. Final Action on Proposed Revision (2): Clarifying How To Determine the Total Quantity of an EHS in Mixtures

Prior to this action, the regulation only stated that when determining whether a reporting threshold for an EHS has been met or exceeded, the owner or operator of a facility shall aggregate the quantity of the EHS present as a component in all mixtures at the facility and all other quantities of the EHS present at the facility. The Agency proposed to amend the regulations to clarify that when determining the total quantity of an EHS present at a facility, the quantity present in a mixture must be included even if the total quantity of that particular mixture is also being counted toward the threshold level for that mixture. For example, a facility has 15,000 pounds of a hazardous chemical mixture which contains 6,000 pounds of sulfuric acid, an EHS. Although the facility may report this mixture on the Tier II form as a mixture since it is above the reporting threshold of 10,000 pounds for a hazardous chemical, the facility must include the amount of the sulfuric acid in this mixture when determining the total quantity of the sulfuric acid present throughout the facility.

Since publication of the July 1990 final rule, this has been EPA's policy for determining if reporting thresholds have been met or exceeded for mixtures that contain EHSs. Thus, the Agency was simply proposing to include EPA's policy in the regulation. The Agency received seven comments supporting this revision and four comments that argued against the proposed revision. Some of the commenters who supported this revision stated that this policy is consistent with the regulatory language in § 370.28(c). These commenters also stated that EHSs should be reported this way to make sure that emergency responders do not unknowingly encounter a mixture containing an EHS component. The commenters who argued against this change stated that this method may ''double count'' the EHS and increase the reporting burden on large facilities. These commenters also argued that an EHS component of a mixture often does not exhibit the same hazardous properties as it does in its pure form, especially when present in a mixture at low concentrations.

EPA agrees with those commenters who supported the proposed revision. In particular, we believe it is important for local government officials to plan and prepare the community for emergencies involving EHSs, and it is also important to protect emergency responders. While EPA understands that this approach may increase the burden for some facilities, we believe that any extra burden is appropriate and necessary to protect emergency responders. EPA also agrees with commenters that a hazardous component may not exhibit the same hazardous properties of the pure chemical when present in a mixture at low concentrations. For this reason, EPA established a de minimis limit (1

percent for hazardous chemicals and 0.1 percent for carcinogens) below which the component in a mixture need not be counted toward the threshold quantity (October 15, 1987, 52 FR 38344).

The requirement to aggregate EHSs present throughout the facility under EPCRA sections 311 and 312 is consistent with the requirements under emergency planning in EPCRA section 302. EPA anticipates that LEPCs will request information about EHSs present at a facility in developing emergency response plans. Therefore, EPA believes that routine reporting of EHSs under sections 311 and 312 would facilitate the planning process. For these reasons, EPA is clarifying in this action that when determining the total quantity of an EHS present at a facility, the quantity present in a mixture must be included even if the total quantity of that particular mixture is also being counted toward the threshold level for that mixture. The requirement for aggregating the EHS is included in the table in § 370.14(a).

Once a facility determines that the reporting threshold has been met for an EHS, the facility has the option to report that EHS component in the mixture or the mixture itself. This option is provided in the table in § 370.14(a) as it was previously stated in § 370.28(c)(2). If the facility chooses to report on the mixture itself, the facility must indicate that this mixture contains an EHS and provide the name of that EHS.

6. Final Action on Proposed Revision (3): Adding a Provision for Determining the Quantity of a Non-EHS Hazardous Chemical Component in a Mixture

The third revision that EPA proposed was the addition of a provision to determine if the reporting threshold has been met or exceeded for mixtures that contain non-EHS hazardous chemical components. Prior to this action, the regulations only specified requirements for determining if a reporting threshold has been met or exceeded for mixtures containing EHSs and for reporting mixtures containing EHSs. However, in the preamble of the July 26, 1990 final rule, the Agency provided options for mixtures containing non-EHS hazardous chemical components. In that preamble, the Agency stated that if a facility has mixtures that contain a non-EHS hazardous chemical component, the facility may either add up the quantity of that non-EHS hazardous chemical component present throughout the facility or consider the total quantity of the mixture to determine if the reporting threshold has been met or exceeded. For example, a facility has two hazardous chemical mixtures, mixture A is 25,000 pounds and mixture B is 15,000 pounds. Mixture A contains 15,000 pounds of hazardous chemical X and 10,000 pounds of hazardous chemical Y. Mixture B contains 10,000 pounds of hazardous chemical X and 5,000 pounds of hazardous chemical Y. The facility owner or operator has the option of adding up the total quantity of each of the hazardous components in both mixtures and report each of the components on the Tier II form if the reporting threshold of 10,000 pounds has been met or exceeded. In this example, the total amount of hazardous chemical X is 25,000 pounds and the total amount of hazardous chemical Y is 15,000 pounds, thus both would need to be reported. The facility owner or operator also has the option to report the mixtures on the Tier II form since both mixtures exceed the reporting threshold of 10,000 pounds. In the June 1998 proposed rule, the Agency proposed to codify these options.

In addition to providing these options, the Agency also proposed a requirement for facilities that choose to report the non-EHS hazardous chemical components of mixtures instead of reporting on the mixture itself. The proposed rule stated that when determining if a reporting threshold has been met or exceeded, these facilities must include the quantity of a non-EHS hazardous chemical component present in a mixture even if that particular mixture is also being counted toward the threshold level for that mixture. In looking at the example above, in addition to the two mixtures present at the facility, assume that the facility has mixture C that contains 10,000 pounds of chemical X and 5,000 pounds of chemical Z. The facility decides to report this mixture on the Tier II form rather than breaking it up into its hazardous chemical components. The Agency proposed that if the facility chooses to break up the components in mixtures A and B, then the facility must also add the quantity of chemical X in mixture C to the quantities of chemical X in mixtures A and B, even though the facility has decided to report mixture C on the Tier II form.

EPA received comments from industry and State and local government agencies regarding this approach. They generally agreed that options for determining if reporting thresholds have been met or exceeded for mixtures containing non-EHS hazardous chemicals should be provided. These commenters also stated that flexibility is important for those operating sites that may only have MSDSs for mixtures. For these sites, reporting on the total quantity of the mixture is preferable. One commenter suggested that reporting individual non-EHS hazardous chemical components should be required only if the facility has an MSDS for that specific component.

The Agency agrees with the commenters that the options proposed for determining if reporting thresholds have been met or exceeded for non-EHS hazardous chemicals present in mixtures are consistent with EPCRA sections 311(a)(3) and 312(a)(3). The statute provides the facility owner or operator with the option to either report the mixture itself or each hazardous chemical component in the mixture. As stated by one of the commenters, and EPA agrees, flexibility is important to those sites that may only have MSDSs for mixtures. In that case, it is preferable for a facility to submit an MSDS for the mixture under section 311 and report the mixture on the inventory form under section 312. Therefore, the Agency is finalizing as proposed by providing options for determining if a reporting threshold has been met or exceeded for mixtures that contain non-EHS hazardous chemicals. The facility has the option to either add up all the amounts of each non-EHS hazardous chemical component present throughout the facility or consider the total quantity of the mixture to determine whether the total quantity equals or exceeds the reporting threshold. These options were proposed to be added to the table in 370.14(b) that is re-numbered as 370.14(a) in this final action.

Once it is determined that the reporting threshold is met or exceeded for either the non-EHS hazardous chemical component or the mixture, the facility may report the quantity of non-EHS hazardous chemical component or the mixture itself. The table in § 370.14(a) states these options.

EPA also understands the concern raised by some commenters that every facility is different. That is, in some cases, the OSHA regulations may require a facility to prepare or have available an MSDS for the mixture and/or its hazardous chemical components. This is the reason that the Agency proposed to add a provision in § 370.28(a)(2) with respect to consistency in MSDS (section 311) and inventory reporting (section 312). This means that if the facility owner or operator decides to report a mixture under section 311 by submitting an MSDS for the mixture, then the facility owner or operator should also report that mixture under section 312 and not report its hazardous chemical components, unless the facility can show that it is not practicable to do so. As stated in the preamble to the

proposed rule, it is important for the MSDS information to correspond with the inventory information to ensure consistency in the qualitative and quantitative information received regarding the hazards of chemicals stored on site. The requirement for consistency in reporting, which was in § 370.28(a)(2), is now in § 370.14(b).

7. Final Action on Proposed Revision (4): Adding a Provision for Determining the Quantity of a Non-EHS Hazardous Chemical When Present in Pure Form and in Mixtures

The fourth revision that EPA proposed was to specify requirements for the owner or operator to determine if reporting thresholds have been met or exceeded when a non-EHS hazardous chemical is present both by itself and as a component in mixture(s). While EPA intended to address non-EHS hazardous chemicals with this revision, the term ''non-EHS'' was inadvertently left out of the regulatory language in § 370.14(e). However, the preamble language included the term ''non-EHS'' within the discussion of this proposed revision. The proposed regulatory language indicated that if a hazardous chemical (should have stated non-EHS hazardous chemical) is present at a facility both by itself and as a component in mixture(s), the facility must determine the total amount of that chemical and compare it to the reporting threshold. To determine this quantity, the facility would have to add together all quantities of the non-EHS hazardous chemical present at the facility, including the quantity present in concentrations greater than 1% in all mixtures. For example, a facility has a non-EHS hazardous chemical in pure form and in mixtures throughout the facility. This proposed requirement states that the facility owner or operator must add the quantity of that non-EHS hazardous chemical in pure form to those quantities of that non-EHS hazardous chemical in mixtures to determine if the reporting threshold of 10,000 pounds is met or exceeded. The purpose of this proposed revision was to establish a clear method for accurately calculating the quantity of non-EHS chemicals present.

Four commenters supported this proposed revision and nine commenters opposed it. The commenters that supported it stated that this method would more accurately account for the total amount of a non-EHS hazardous chemical in both its pure form and in mixtures present at a facility. Most of the commenters who opposed this revision stated that requiring facilities to aggregate the amounts of non-EHSs on site in mixtures with non-EHS hazardous chemicals present in pure form will impose a great burden on facilities, as well as State and local government agencies that manage the submitted reports. The commenters also argued that requiring aggregation of non-EHSs is unnecessary as information on these chemicals is not required for emergency planning purposes. Commenters also stated that the aggregation will not provide meaningful hazard information to emergency responders. Most of the commenters agreed with the Agency that aggregating and reporting EHSs present throughout the facility is vital to emergency planning and is important to emergency responders. However, these same commenters opposed aggregating non-EHS hazardous chemicals present throughout the facility.

After reviewing and considering all the comments received, the Agency has decided not to adopt this proposed revision. EPA agrees with those commenters that stated that this approach imposes a burden on most facilities and does not improve local emergency planning efforts, as EPCRA sections 302 and 303 do not require the incorporation of non-EHSs into the comprehensive emergency response plan. As mentioned earlier in this section, EPA has determined that data on EHSs have greater emergency planning and right-to-know value to communities than do data on non-EHSs. Thus, as mentioned above, EPA is not requiring facilities to aggregate non-EHS hazardous chemical components in mixtures and in pure form to determine if the threshold level is met.

B. Tier I and Tier II Inventory Forms and Instructions

1. Removal of Forms and Instructions From the Code of Federal Regulations

The Agency proposed to remove the Tier I and Tier II inventory forms and instructions from the Code of Federal Regulations (CFR). In the preamble to the proposed rule, the Agency stated that removing the forms (and instructions) from the CFR would make it easier for the Agency to make minor changes to them. Under the Paperwork Reduction Act (PRA), the Agency must submit any forms used to collect information from the regulated community to the Office of Management and Budget (OMB) for review and approval. The Agency must develop a supporting statement explaining the reasons, the method, and the burden hours and costs imposed on the regulated community for the collection of the information. Once approved, these forms receive an OMB control number and expiration date, usually three years from approval. To continue using these forms, the Agency must submit them along with the supporting statement to be reviewed and renewed by OMB by the expiration date. Therefore, if the forms remain in the CFR, the Agency would need to reprint them every three years just to reflect the new OMB information collection date, even if no other changes were made to the form.

Sixteen commenters, mainly consisting of State and local government agencies, supported the removal of the forms and instructions from the CFR. Commenters from industry also supported removal of the forms from the CFR and making them available on EPA's Web site. Five commenters, however, opposed the removal of the forms and the instructions from the CFR.

Commenters who supported the change did so because they believe that once the forms and instructions are removed, EPA can make minor changes to them with minimal expense. Some commenters stated that most States have developed their own forms with additional specific requirements; therefore, States would make their forms available to the regulated community. Other supporters also suggested that any major changes to the forms should still be made in a rulemaking process and not just through the public comment period during the renewal and approval process for the information collection requirements under the Paperwork Reduction Act (PRA). Commenters that opposed the removal of the forms and instructions from the CFR were concerned that EPA would change them without going through a public notice and comment (e.g. via rulemaking) process. Some of the commenters also suggested that the Agency should require the use of only the Federal Tier I and Tier II forms, instead of allowing separate forms for each State, since the Federal forms promote uniformity of reporting.

In response to these comments and as described in the proposal, EPA has decided to remove the forms and instructions from the CFR, as proposed. However, revised §§ 370.41 and 370.42 will contain a narrative description of the Tier I and Tier II informational requirements. The Tier I and Tier II forms and instructions will be available on the Agency's Web site at *http://www.epa.gov/emergencies*. If the Agency makes significant changes to the forms in the future, we would go through the rulemaking process and solicit public comment before such changes were made to the form.

We would also note that while EPA agrees with the commenters that reporting should generally be uniform, EPA also believes that each State should have the flexibility to collect the hazardous chemical inventory information it needs to develop emergency plans for its communities. States can implement EPCRA according to their needs and may promulgate requirements that are more stringent than the Federal requirements. States also can add more chemicals, set lower reporting thresholds and require facilities to report using a State form, including the electronic submission of information. At present, most States have their own reporting formats or have requirements that are more stringent than the Federal Regulations. Thus, facilities are encouraged to contact their States to determine whether any additional requirements or formats are required by their States.

2. Revisions to the Forms and Instructions

In addition to proposing to remove the forms and instructions from the CFR, EPA also proposed several changes to the forms and one change to the instructions. However, before discussing these, and as way of background, EPA stated in the preamble to the proposed rule that the Agency was undertaking an agency-wide initiative to streamline and consolidate the Agency's collection and maintenance of environmental data, which was intended to improve EPA's management and use of such information, as well as to provide improved public access to such information by creating links between major data sources. This initiative, the Facility Identification Initiative, would establish a unique Facility Identification Number for facilities that submit environmental data to EPA under various regulatory programs. EPA would then be able to establish links among records of environmental data relative to a specific facility and also establish means for the public to access the Agency's data using this number.

Thus, EPA proposed and sought public comment on whether to require facilities to report their Facility Identification Number on their Tier I (or Tier II) form, when reporting under EPCRA section 312, if such a number has been assigned under another State or Federal environmental program. EPA received a total of thirty-five comments on this issue. Twenty-five commenters supported and ten commenters opposed this revision. Commenters that supported this change stated that the inclusion of the Facility Identification Number will facilitate information sharing between localities and EPA. These commenters also stated that it would be helpful to integrate environmental reporting across program areas. However, those commenters that did not support the change argued that many of the facilities that comply with the Tier II reporting requirement would not have a number because they may not have to comply with other environmental programs. Other commenters suggested that this data element should be optional.

Based on our evaluation of the comments, we have decided not to require the Facility Identification Number be reported on these forms. The Agency agrees with the commenters that some facilities may not have a number assigned to them. Also, EPA is aware that many States assign a number to their facilities, which is also labeled as ''Facility Identification Number.'' EPA believes that facilities could become confused with two numbers assigned by EPA and the State. Therefore, this data element will not be included on the Tier I and Tier II forms at this time.

The second change that was proposed to the Tier I and Tier II forms was to require facilities to report the North American Industry Classification System (NAICS) code for their facility on their forms instead of the Standard Industrial Classification (SIC) code. The SIC codes were replaced by the NAICS codes in 1997. When the proposed rule was published in June 1998, facilities were just becoming familiar with the new codes and the Agency received many adverse comments on this proposed change. Commenters stated that it was premature to require this change since the industry is not very familiar with the new codes. However, other commenters supported the change to the NAICS code, but suggested that the Agency should allow facilities to report both codes until the codes are universally accepted.

Since the rule was first proposed in 1998, the Agency believes that facilities should now be familiar with the NAICS codes since they may have been using them to comply with other EPA programs. Therefore, as proposed, EPA is requiring that facilities use the NAICS code for their facility on their Tier I and Tier II forms. The Agency will revise these forms to reflect this change.

Finally, as mentioned in the preamble to the proposed rule, EPA is revising the informational requirements to the Tier II form in § 370.42 to require facilities to report ''chemical name or the common name of the chemical as provided on the *Material Safety Data Sheet*.'' Commenters indicated general support for this revision. Therefore, in this final action, the Tier II Informational Requirements in § 370.42 codifies this statutory requirement.

C. Penalties for Noncompliance

The penalties for noncompliance with the emergency release notification and hazardous chemical reporting requirements were stated in §§ 355.50 and 370.5, respectively. The Tier I and Tier II form instructions contained in §§ 370.40 and 370.41 also included a description of potential penalties for noncompliance with the hazardous chemical reporting requirements. In order to streamline the regulations, EPA proposed removing these provisions from the CFR, since the penalties are already established in the statute. Commenters supported this change. Thus, the final rule will not contain this language.

It should also be noted that EPA believes it is appropriate to remove the penalty information from this regulation because penalties are periodically adjusted and published in the **Federal Register** in a separate action. Under the Debt Collection Improvement Act (DCIA) of 1996, EPA makes adjustments to the Civil Monetary Penalties at least once every four years to account for inflation. Therefore any penalty information printed in an EPA regulation would become obsolete once the next four year cycle begins. The Agency would need to update every rule that contains penalty information; instead, it publishes current penalty information for all regulations in the Civil Penalty Inflation Adjustment Rule. The most recent publication of the Civil Penalty Inflation Adjustment Rule was published in the **Federal Register** on February 13, 2004 (69 FR 7126).

D. Additional Changes to 40 CFR Parts 355 and 370 Regulations

EPA proposed some minor changes to the regulations in 40 CFR parts 355 and 370 to make the rules clearer and easier to use. Some of the proposed changes included codifying policy statements that EPA has provided to the regulated community, clarifying some requirements, and restating the statutory requirements. Commenters generally supported these changes and thus, the regulations have been amended to reflect these changes. As it was stated earlier in this action, EPA has re-numbered the sections in both 40 CFR parts 355 and 370. Thus, the discussion below reflects the re-numbered sections where the changes can be found.

- SERC and LEPC—The Agency proposed replacing the phrase ''State Emergency Response Commission'' with SERC and the phrase ''Local Emergency

Planning Committee'' with LEPC in 40 CFR parts 355 and 370, since these terms are now commonly used by the regulated community and the public. Commenters supported this change and EPA is adopting it in this final action. These terms are added to the definition sections in 40 CFR parts 355 and 370. The definitions of these terms can be found in §§ 355.61 and 370.66.

• Quantity of an extremely hazardous substance in a mixture—The instructions for calculating the quantity of an EHS present in a mixture for emergency planning in § 355.30(e)(1), are now in § 355.13. The terms ''mixture'' and ''solution'' are both used in these instructions. EPA proposed to remove the term ''solution'' since the definition of the term ''mixture'' includes ''solution.'' Most commenters supported this change. EPA has also replaced the term ''mass'' with the term ''weight,'' which is more familiar to the public. For purposes of these regulations, these two terms are synonymous. EPA also received comments supporting this revision. Both of these proposed changes are finalized in today's action. In addition, section 355.13 now includes an example calculation to improve understanding of these instructions.

• Extremely Hazardous Substances in solid form—The instructions to determine which threshold planning quantity (TPQ) to use for an EHS in solid form in § 355.30(e)(2)(i) are now in § 355.15. EPA proposed to replace the phrases ''exists in'' and ''is handled in'' with ''is in'' in these instructions, since this phrase is simpler and easier to understand. EPA received comments supporting this change and is finalizing it in today's action.

• Facility Emergency Coordinator—The regulations for emergency planning first promulgated on April 22, 1987 (52 FR 13395) set forth requirements in § 355.30(c) that require the owner or operator of a facility to notify the LEPC (or the Governor if there is no LEPC) of the name of the facility emergency coordinator or the facility representative. In the 1998 proposed rule, EPA proposed that the SERC be notified if there is no LEPC, or the Governor if there is no SERC. The Agency proposed this change because most States now have functioning SERCs than when the regulations were first promulgated in April 1987. EPA received comments supporting this revision. In re-organizing and re-numbering part 355, this requirement is now finalized in § 355.20.

The regulations in § 355.30(c) also require that the name of the facility emergency coordinator be provided on or before September 17, 1987 or 30 days after an LEPC is established, whichever is earlier. This notification deadline corresponds to the statutory deadline found in EPCRA section 303(d)(1). Neither the statute nor the current regulations establish a deadline for providing this information if a facility becomes subject to the emergency planning requirements (that is, an EHS first becomes present at the facility in excess of its TPQ, or the EHS list is revised and an EHS on the revised list is present at the facility in excess of its TPQ), after September 17, 1987 or if a new LEPC is established. EPCRA section 302(c) does, however, require that, within 60 days after becoming subject to the emergency planning requirements, a facility must provide notice that it is subject to these requirements. EPA believes that the name of the facility emergency coordinator is an integral part of the emergency planning notification requirements, and should therefore be provided at the same time as the emergency planning notice. Accordingly, the Agency proposed this change and new § 355.20 now requires that the name of the facility emergency coordinator be provided by September 17, 1987, or within 30 days of the establishment of an LEPC (in accordance with the statutory deadline at EPCRA section 303 (d) (1)), or within 60 days after a facility becomes subject to EPCRA's emergency planning requirements (consistent with EPCRA section 302(c)). In today's action, the deadline for notification of the name of the facility emergency coordinator is now consistent with the deadline for a facility to provide notice that it is subject to the emergency planning requirements (see revised § 355.20). Section 355.20 presents a summary in table format of the information that is required under EPCRA's emergency planning requirements, including the types of information reported, required recipients of the information, and deadlines for reporting. All commenters supported this revision.

• Emergency Planning Notification.

Section 355.30 requires that a facility notify the SERC that it is subject to the emergency planning requirements under EPCRA section 302. EPA proposed that the LEPC also be notified. This would be consistent with section 302(c) of EPCRA, which requires that an owner or operator notify the SERC and LEPC when his facility becomes subject to the emergency planning requirements. This revised notification requirement is now in § 355.20.

In order for the regulations to be consistent with the statutory requirements in EPCRA section 303(d)(1), the Agency proposed to add ''within 30 days after establishment of an LEPC'' in § 355.20. Prior to the revisions finalized in this rulemaking, § 355.30(b) only stated that the notification be provided on or before May 17, 1987 or within 60 days after a facility first becomes subject to the requirements. Commenters supported these revisions, although we decided to re-phrase it as ''within 30 days after an LEPC is established.'' The table in § 355.20 now includes this phrase for emergency planning notification and facility emergency coordinator.

In the process of rewriting the regulations in plain language format, EPA realized that the dates, May 17, 1987 and September 17, 1987 in § 355.30 for emergency planning notification and facility emergency coordinator are no longer applicable. Therefore, EPA decided to remove those dates from the revised regulations in § 355.20.

• Changes relevant to emergency planning.

Prior to the revisions finalized in this rulemaking, § 355.30(d) stated that facility owners or operators were required to inform the LEPC of any changes occurring at the facility which may be relevant to emergency planning. In re-designating all the sections in this part, EPA proposed that this requirement be in § 355.20 and to include the term ''promptly'' in order to be consistent with EPCRA section 303(d)(2). Commenters supported this revision, but suggested that the Agency provide a specific time period, such as 10, 20 or 30 days, rather than using a vague term. EPA agrees with the commenters, but also notes that the changes that may occur at a facility could be important for developing and maintaining emergency plans. Therefore, EPA is requiring that information about changes at a facility relevant to emergency planning must be submitted within 30 days of such changes. Changes relevant to emergency planning may include, but not be limited to, notifying that facility is no longer in operation, new EHSs are present at the facility, EHSs are moved to a different location at the facility, EHSs are no longer present at the facility, etc.

• Format for emergency planning and release notifications.

Since the promulgation of the final rule on April 22, 1987 (52 FR 13379), EPA's policy has been that emergency planning notification under EPCRA section 302 should be provided in writing. However, the regulations do not specify how emergency planning notification shall be provided. In this

action, EPA has added a new section 355.21, to codify our existing policy to recommend that facilities provide emergency planning notification in writing.

EPA also proposed to add section 355.41 to the emergency release notification under the EPCRA section 304 requirements which clarifies that the initial notification should be oral and the follow-up notification should be in writing. EPA does not specify a particular format, but does note that an LEPC may request a specific format for submission of this information. Commenters supported both of these revisions.

• 24-hour time period for release notification.

The emergency release notification requirements in § 355.40 do not indicate the time period in which a release of a reportable quantity must occur to trigger emergency release notification requirements. Under EPCRA section 304(a), releases are reportable if they occur in a manner that requires, or would require, notification under CERCLA section 103(a). EPA's interpretation has been that the 24-hour time period under CERCLA also applies to EPCRA. This time period was proposed and is now added to the regulations in § 355.33, which states that the ''release of a reportable quantity * * * within any 24-hour period'' triggers the emergency release notification requirements. Commenters supported this revision.

• Releases during transportation.

The emergency release notification requirements that apply to the release of a substance during transportation (or storage incident to transportation) in § 355.40(b)(4)(ii) are now in § 355.42(b). EPA proposed to remove the term ''transportation-related release'' and its definition from this section since this term may add confusion to the requirements. EPA also proposed to revise this requirement to be consistent with the language in the statute in section 304(b)(1). The statute states: ''* * * with respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice * * * calling the operator.'' EPA believes that the requirement is easier to understand if the term ''transportation-related release'' is removed from the regulations and replaced with the words ''release during transportation and storage incident to transportation.'' Commenters supported this revision.

• Releases that are continuous.

Under the definitions in 40 CFR 302.8(b), a release that is continuous and stable in quantity and rate qualifies for reduced reporting requirements under EPCRA. The requirements for reporting continuous releases in § 355.40(a)(2)(iii) are now in § 355.32. Continuous releases are subject to four notification requirements. As stated in the proposed rule, these notification requirements have been reorganized in today's action in order to clarify that the community emergency coordinator of the LEPC and the SERC of any State that is likely to be affected by the release must be notified in each of the four release notifications (in addition to the notifications required under 40 CFR 302.8). Commenters supported this revision.

• State or local format for reporting inventory information.

One of the main goals of the June 1998 proposed rule was to provide flexibility for SERCs and LEPCs with respect to the manner in which information is reported under EPCRA sections 311 and 312. Sections 370.40 and 370.41 proposed flexibility in that State or local forms could be used for reporting inventory information, as long as the content is identical to the uniform Federal forms (Tier I or Tier II forms). EPA is revising these provisions so that the use of a State or local format is allowed, as proposed. The provisions allow the submittal of inventory information in a variety of ways, including electronic, as long as all the information required under the statute and its implementing regulations is provided. These revisions are set forth in § 370.40. Commenters supported this revision.

EPA also proposed that, when using State or local formats for reporting inventory information, the use of State or local codes for weight ranges are allowed, provided that the weight ranges are no broader than those provided in § 370.43. EPA also proposed that State or local codes for storage types and conditions can be used provided that the codes specify the same or more detailed information as that specified in § 370.43. As proposed, the Agency has added paragraph (d) to § 370.43, allowing this flexibility. Commenters supported this revision.

• SERC or LEPC response to a request for Tier II information within 45 days.

In order to be consistent with the language in EPCRA section 312(e)(3)(D), EPA proposed to add, ''A SERC or LEPC must respond to a request for Tier II information * * * within 45 days of receiving such a request.'' Section 370.61(b) in today's action adds this new requirement. Commenters supported this revision.

E. Definitions

EPA proposed to combine all definitions found in both 40 CFR parts 355 and 370 into one section at the end of 40 CFR part 355 in order to improve the readability of the rule. By placing the consolidated definitions section at the end of 40 CFR part 355, the reader would not have to read through all of the definitions before seeing how they are used in the text. EPA sought comments on whether these changes improve the readability of the rule. Many of the commenters suggested that both 40 CFR parts 355 and 370 should have a definition section. Therefore, EPA will include a definition section at the end of each part in § 355.61 and § 370.66 under the heading ''*How are key words in this part defined?*''

EPA also proposed some minor revisions to some of the terms found in the definition section for 40 CFR parts 355 and 370. The Agency is finalizing all of the changes, as proposed.

• *Act.* The term ''Act,'' used to define ''the Superfund Amendments and Reauthorization Act of 1986'' in 40 CFR part 355, has been removed from the definition section. Each of the laws, the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) are used in today's action by name of the Act. Therefore, EPA decided to remove the term ''Act.'' Commenters supported this revision.

• *SERC or LEPC.* The terms ''commission'' and ''committee'' have been replaced with ''SERC'' and ''LEPC.'' Commenters supported this revision.

• *EPCRA and OSHA.* The definitions of these acronyms are added to the definition sections as proposed. Commenters supported this revision.

• *Facility.* The final rule, published on July 26, 1990 (55 FR 30634), revised the definition of facility for both 40 CFR parts 355 and 370 to clarify that the definition includes subsurface structures that are man-made or natural structures into which hazardous chemicals are purposefully placed or removed through human means, such that the structures function as a containment structure. The purpose of this revision was to clarify that the term ''structures'' in the definition of ''facility'' is not limited to surface structures, but also includes subsurface structures. However, the Agency inadvertently omitted the phrase ''all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for

human use'' in 40 CFR part 355. EPA intended both 40 CFR parts 355 and 370 to have the same definition. This discrepancy is being corrected in this final rule.

EPA received a total of five comments; two commenters supported this change and one provided a comment that was outside the scope of the proposed rule. Two other commenters requested that EPA re-confirm the policy that the Agency issued in a letter dated October 25, 1990, to the American Petroleum Institute (API).

In that letter, EPA clarified that oil and gas deposits with indefinite boundaries are not structures within the definition of facility and therefore not considered part of the ''facility.'' However, natural structures that function as containment structures, such as a cave or a salt dome which have more definite boundaries are considered structures within the definition of ''facility.'' EPA concluded that, for emergency planning, emergency release notification, and hazardous chemical reporting, the definition of ''facility'' does not include oil or gas deposits and thus, is re-confirming this policy today.

• *Hazardous Substances.* The terms ''CERCLA hazardous substances'' and ''extremely hazardous substances'' were proposed to be placed together in the definition section under the term ''hazardous substances'' in order to eliminate the confusion between them. EPA received two comments that supported this minor change. However, one commenter suggested that ''CERCLA hazardous substances'' and ''extremely hazardous substances'' should be separate items in the definition in order to make it easier to locate these terms. EPA decided to keep both terms as separate entries in the definition section of 40 CFR part 355.

• *Hazardous Chemical.* Two organizational changes were proposed to improve the clarity of this definition. The first was to re-format the list of the exceptions to the term. The second was to move the phrase ''present in the same form and concentration as a product packaged for distribution and use by the general public'' to the exceptions to the definition of the term ''hazardous chemical.'' Prior to the revisions in this rulemaking, this phrase was defined separately in the definition section. The Agency believes that including this phrase in the list of exceptions to the term ''hazardous chemical'' will assist the reader to better understand its meaning. EPA received one comment that supported this revision. One commenter, however, argued that this exemption should not be allowed since many products sold to the general public are extremely dangerous. While EPA agrees that some products sold to the general public may pose a danger, the statute provides exemptions from the term ''hazardous chemical'' and EPA is only restating the statutory exemption in the definition section. Thus, this change is being finalized today.

• *Inventory form.* The Tier I and Tier II forms have been removed from the regulations in 40 CFR part 370 as discussed previously in the preamble. However, this term is kept in the definition section in 40 CFR part 370 and is revised to indicate that the information requirements for these forms can be found in §§ 370.40 through 370.45. EPA received two comments that supported this revision.

• *Medium or media.* This term is added to the definition section in 40 CFR part 355.

• *Mixture.* The term ''mixture'' is used in both 40 CFR parts 355 and 370. However, the definition of this term only appeared in 40 CFR part 355. Thus, EPA is including this term in the definition section of both §§ 355.61 and 370.66. EPA also is clarifying that the definition of ''mixture'' in 40 CFR part 370 is the same as used in 29 CFR 1910.1200(c), since the applicability of 40 CFR part 370 is based on OSHA's hazard communication standard (29 CFR 1910.1200). EPA received one comment that supported this revision. In addition, the prior definition to the term ''mixture'' included ''compounds.'' In a compound, the various constituents do not retain their individual identities, so a ''compound'' should not be treated as a mixture. Therefore, as stated in the preamble to the proposed rule, EPA has decided to remove the term ''compound'' from the definition of mixture.

• *Reportable Quantity.* Prior to the revisions in this rulemaking, the definition of the term ''reportable quantity'' stated that ''for any CERCLA hazardous substance, its reportable quantity is established in Table 302.4 of 40 CFR part 302, for such substance. For any other substance, the reportable quantity is one pound.'' EPA proposed and is revising this definition to add the phrase ''for any extremely hazardous substance, its reportable quantity means the reportable quantity established in appendices A and B of this part.'' EPA also proposed and is adding the phrase, ''unless and until superseded by regulations establishing a reportable quantity for newly listed EHSs or CERCLA hazardous substances, a weight of 1 pound shall be the reportable quantity.'' Commenters supported this revision.

• *Threshold Planning Quantity.* The term ''threshold planning quantity'' only appeared in the definition section in 40 CFR part 355. Since this term is also used in 40 CFR part 370, this term will also be included in the definition section in 40 CFR part 370. EPA received one comment that supported this revision.

• *Tribe.* As proposed, the term ''Tribe'' is placed with the definition of Indian Tribe. These terms will appear in the definition section in both 40 CFR parts 355 and 370. EPA received one comment that supported this revision.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. In addition, this final action is re-written in a plain language format, including adding tables and examples, to assist the regulated community better understand the requirements.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community better understand the requirements.

However, OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR parts 355 and 370 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2050–0092 and 2050–0072, EPA ICR numbers 1395.06 and 1352.10, respectively.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives, ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also re-writes the regulations in a plain language format to assist the regulated community to better understand the requirements. We have therefore concluded that today's final action will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, sections 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community to better understand the requirements. Most of the revisions included in this final action, including the plain language rewrite, are intended to help the States, Tribal governments and local government agencies better explain the requirements and implement the program under EPCRA. Thus, this rule does not impose any requirements on State, local or tribal governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local government officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community to better understand the requirements. Most of the revisions included in this final action, including the plain language rewrite, are intended to help the States, Tribal governments and local agencies. These entities will be able to better explain the requirements and implement the program under EPCRA. This rule does not impose any requirements on State, local or tribal governments. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to

ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community to better understand the requirements. Most of the revisions included in this final action, including the plain language rewrite are intended to help Tribal governments, so these entities can better explain the requirements and implement the program under EPCRA. This rule does not impose any requirements on State, local or tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community better understand the requirements.

H. Executive Order 13211 (Energy Effects)

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community better understand the requirements.

Under Executive Order 12866, this action is a ''significant regulatory action''. Accordingly, EPA submitted this action to the Office of Management Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or would otherwise be impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations of when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final action only includes minor revisions to 40 CFR parts 355 and 370, codifies statutory requirements, and clarifies certain interpretations and policy statements that EPA has provided to the regulated community. This final action also is re-written in a plain language format to assist the regulated community in better understanding the requirements. In addition, this final action does not affect public access to any of the information provided under the Emergency Planning Notification, Emergency Release Notification and Hazardous Chemical Reporting regulations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 355 and 370

Environmental protection, Chemicals, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Superfund.

Dated: October 17, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

■ 1. Part 355 is revised to read as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

Subpart A—General Information

Subpart B—Emergency Planning

Who Must Comply

Authority: Sections 302, 303, 304, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11002, 11003, 11004, 11045, 11047, 11048, and 11049).

Subpart A—General Information

§ 355.1 What is the purpose of this part?

(a) This part (40 CFR part 355) establishes requirements for a facility to provide information necessary for developing and implementing State and local chemical emergency response plans, and requirements for emergency notification of chemical releases. This part also lists Extremely Hazardous Substances (EHSs) and Threshold Planning Quantities (TPQs) in Appendices A and B, which are used in determining if you are subject to these requirements.

(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.

§ 355.2 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.

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

The definitions of key words used in this part are in § 355.61. It is important to read the definitions for these key words because the definition explains the word's specific meaning associated with the regulations in this part.

Subpart B—Emergency Planning

Who Must Comply

§ 355.10 Must my facility comply with the emergency planning requirements of this subpart?

You must comply with the emergency planning requirements in this subpart if your facility meets either of the following two conditions:

(a) Any extremely hazardous substance (EHS) is present at your facility in an amount equal to or greater than its threshold planning quantity (TPQ), or

(b) Your facility has been designated for emergency planning purposes, after public notice and opportunity for comment, by one of the following three entities:

(1) The State Emergency Response Commission (SERC).

(2) The Governor of the State in which your facility is located.

(3) The Chief Executive Officer of the Tribe for the Indian Tribe under whose jurisdiction your facility is located.

§ 355.11 To what substances do the emergency planning requirements of this subpart apply?

The emergency planning requirements of this subpart apply to any EHS listed in Appendices A and B of this part. Additionally, if a facility is designated for emergency planning purposes, as provided in § 355.10(b), substances that are not EHSs at this facility may become subject to the emergency planning requirements.

§ 355.12 What quantities of extremely hazardous substances trigger emergency planning requirements?

Any EHS present at your facility in an amount equal to or greater than its TPQ triggers the emergency planning requirements of this subpart. The TPQs are listed in Appendices A and B of this part in the column labeled ''threshold planning quantity.''

§ 355.13 How do I calculate the quantity of an extremely hazardous substance present in mixtures?

If an EHS is present in a mixture in a particular container, determine the quantity (in pounds) of the EHS in that container by multiplying the concentration of the EHS (in weight percent) by the weight (in pounds) of the mixture in the container. If the concentration of an EHS is less than or equal to one percent in the mixture, you do not have to count that EHS. Here is an example calculation:

Example: You have 150 pounds of a mixture that contains 20 weight percent of a certain EHS. The quantity of EHS present in the mixture is:

EHS (in pounds)
= (weight percent of EHS) × (weight of mixture)
= (20 percent) × (150 pound mixture)
= (0.20) × (150)
EHS (in pounds)
= 30 pounds

§ 355.14 Do I have to aggregate extremely hazardous substances to determine the total quantity present?

You must aggregate (i.e., add together) the amounts of each EHS at your facility to determine if a TPQ is present. This means that, for a particular EHS, you must determine the total amount present at any one time at your facility by adding together the quantity of pure EHS and the quantity contained in all mixtures, regardless of location, number of containers, or method of storage. You do not have to count an EHS in a mixture if the concentration of that EHS is less than or equal to one percent.

§ 355.15 Which threshold planning quantity do I use for an extremely hazardous substance present at my facility in solid form?

EHSs that are in solid form are subject to one of two different TPQs (for example, TPQs may be listed as 500/10,000 pounds), both of which are listed in Appendices A and B of this part. Here is how to determine which of the two listed TPQs you must use for an

EHS present at your facility in solid form:

(a) Use the lower TPQ from Appendices A and B of this part if the solid:

(1) Is in powdered form and has a particle size less than 100 microns;

(2) Is in solution;

(3) Is in molten form; or

(4) Meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3 or 4 for reactivity.

Note to paragraph (a): Use the instructions in § 355.16 to calculate the quantity present for the categories of solids listed in paragraphs (a)(1), (2) and (3) of this section.

(b) If the solid does not meet one of the criteria in paragraph (a) of this section, then the TPQ is 10,000 pounds.

§ 355.16 How do I determine the quantity of extremely hazardous substances present for certain forms of solids?

For the three forms of solids that are listed in § 355.15(a)(1) through (3), use these instructions to determine the quantity of extremely hazardous substance present:

(a) *Solid in powdered form with a particle size less than 100 microns.* Multiply the weight percent of solid with a particle size less than 100 microns in a particular container by the total weight of solid in the container.

(b) *Solid in solution.* Multiply the weight percent of solid in solution in a particular container by the total weight of solution in the container.

(c) *Solid in molten form.* Multiply the weight of solid in molten form by 0.3.

How to Comply

§ 355.20 If this subpart applies to my facility, what information must I provide, who must I submit it to, and when is it due?

Use this table to determine the information you must provide, who to provide it to, and when:

What types of emergency planning notification are required?	What information must I provide?	To whom must I provide the information?	When must I provide the information?
(a) Emergency planning notification.	You must provide notice that your facility is subject to the emergency planning requirements of this subpart.	To the SERC and the LEPC	Within 60 days after your facility first becomes subject to the requirements of this subpart. If no LEPC exists for your facility at the time you are required to provide emergency planning notification, then you should report to the LEPC within 30 days after an LEPC is established for the emergency planning district in which your facility is located.
(b) Facility emergency coordinator	You must designate a facility representative who will participate in the local emergency planning process as a facility emergency response coordinator. You must provide notice of this facility representative.	To the LEPC (or the SERC if there is no LEPC, or the Governor if there is no SERC).	Within 60 days after your facility first becomes subject to the requirements of this subpart. If no LEPC exists when you first report, then provide an additional report to the LEPC within 30 days after such LEPC is established for the emergency planning district in which your facility is located.
(c) Changes relevant to emergency planning.	You must provide notice of any changes occurring at your facility that may be relevant to emergency planning.	To the LEPC	Within 30 days after the changes have occurred.
(d) Requested information	You must provide any information necessary for developing or implementing the local emergency plan if the LEPC requests it.	To the LEPC	Promptly. Note: The LEPC may specify a time frame for this information.

§ 355.21 In what format should the information be submitted?

EPA does not require any specific format. EPA recommends that you submit the information described in § 355.20 in writing in order to insure appropriate documentation. The SERC or LEPC may request that this information be submitted in a specific format.

Subpart C—Emergency Release Notification

Who Must Comply

§ 355.30 What facilities must comply with the emergency release notification requirements of this subpart?

You must comply with the emergency release notification requirements in this subpart if both of these two conditions are met:

(a) You produce, use, or store a hazardous chemical at your facility; and

(b) You release a reportable quantity (RQ) of any EHS or of a hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA Hazardous Substance) at your facility. Certain releases are exempted from these requirements. Exempted releases are listed in § 355.31.

Note to paragraph (b): In addition to the emergency release notification requirements of this subpart, releases of CERCLA hazardous substances are subject to the notification requirements under CERCLA. This is explained further in subpart D of this part.

§ 355.31 What types of releases are exempt from the emergency release notification requirements of this subpart?

You do not have to provide emergency release notification under this subpart for any of the following six types of releases of EHSs or CERCLA hazardous substances that occur at your facility:

(a) Any release that results in exposure to persons solely within the boundaries of your facility.

(b) Any release that is a federally permitted release as defined in section 101(10) of CERCLA.

(c) Any release of a pesticide product that is exempt from reporting under section 103(e) of CERCLA.

(d) Any release that does not meet the definition of release under section

101(22) of CERCLA and is therefore exempt from CERCLA section 103(a) reporting.

(e) Any radionuclide release that occurs:

(1) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land.

(2) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: Land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw (not beneficiated or processed) materials; and replacing in mined-out areas coal ash, earthen materials from farming or construction, or overburden or other raw materials generated from the exempted mining activities.

(3) From the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.

(4) From piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.

(f) Any release less than 1,000 pounds per 24 hours of nitrogen oxide or nitrogen dioxide to the air which is the result of combustion and combustion related activities.

§ 355.32 Which emergency release notification requirements apply to continuous releases?

If the release of an EHS or CERCLA hazardous substance is continuous and stable in quantity and rate at your facility as defined in 40 CFR 302.8(b), then the release qualifies for reduced reporting requirements under this subpart. Under these reduced reporting requirements, you do not need to provide the notifications required under § 355.40. However, in addition to the notifications required under 40 CFR 302.8, you must make all of the following notifications to the community emergency coordinator for the LEPC for any area likely to be affected by the release and to the SERC of any State likely to be affected by the release:

(a) Initial notifications as specified in 40 CFR 302.8 (d) and (e).

(b) Notification of a ''statistically significant increase,'' defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range.

(c) Notification of a ''new release'' as specified in 40 CFR 302.8(g)(1).

(d) Notification of a change in the normal range of the release as specified under 40 CFR 302.8(g)(2).

§ 355.33 What release quantities of EHSs and CERCLA hazardous substances trigger the emergency release notification requirements of this subpart?

The release of a reportable quantity (RQ) of an EHS or CERCLA hazardous substance within any 24-hour period triggers the emergency release notification requirements. RQs for EHSs are listed in Appendices A and B of this part in the column labeled ''reportable quantity.'' RQs for CERCLA hazardous substances are listed in Table 302.4 of 40 CFR 302.4 in the column labeled ''final RQ.''

How To Comply

§ 355.40 What information must I provide?

You must make two separate notifications to comply with the emergency release notification requirements of this subpart: an immediate notification, and as soon as practicable thereafter a written follow-up emergency notification (or notifications, as more information becomes available).

(a) *Immediate notification.* The notice required under this section shall include as much of the following information known at the time. However, the retrieval of this information should not cause a delay in the notification on the emergency response.

(1) The chemical name or identity of any substance involved in the release.

(2) Indicate whether the substance is an EHS.

(3) Provide an estimate of the quantity of any such substance that was released into the environment.

(4) State the time and duration of the release.

(5) The medium or media into which the release occurred.

(6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(7) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(8) The name and telephone number of the individual (or individuals) to be contacted for further information.

(b) *Written follow-up emergency notification.* Except for releases that occur during transportation or from storage incident to transportation, you must provide a written follow-up emergency notice (or notices, as more information becomes available), as soon as practicable after the release. In the written follow-up emergency notice, you must provide and update the information required in the immediate notification and include additional information with respect to all of the following:

(1) Actions taken to respond and contain the release.

(2) Any known or anticipated acute or chronic health risks associated with the release.

(3) Where appropriate, advice regarding medical attention necessary for exposed individuals.

(c) You are not required to submit a written follow-up notification for a release that occurred during transportation or from storage incident to transportation. See § 355.42(b) for requirements for reporting such releases.

§ 355.41 In what format should the information be submitted?

The immediate notification, described in § 355.40(a), should be oral. The follow-up emergency notification, described in § 355.40(b), shall be in writing. EPA does not specify a particular format for the written follow-up emergency notification.

Note: The LEPC may request a specific format for this information.

§ 355.42 To whom must I submit the information?

(a) You must provide the immediate emergency release notification information and the written follow-up notification to:

(1) The community emergency coordinator for the LEPC of any area likely to be affected by the release (if there is no LEPC, notify the relevant local emergency response personnel); and

(2) The SERC of any State likely to be affected by the release.

(b) For a release that occurs during transportation or from storage incident to transportation, you may meet the requirements of this subpart by notifying the 911 operator (or in the absence of a 911 emergency telephone number, the operator) of the immediate notification information listed in § 355.40(a). You are not required under this subpart to submit a written follow-up notification, as described in § 355.40(b), for such a release.

§ 355.43 When must I submit the information?

(a) You must provide the required emergency release notification

information described under § 355.40(a), immediately.

(b) You must provide the written follow-up emergency notice (or notices, as more information becomes available) described under § 355.40(b), as soon as practicable after the release.

Subpart D—Additional Provisions

§ 355.60 What is the relationship between the emergency release notification requirements of this part and the release notification requirements of CERCLA?

The emergency release notification requirements of this part are in addition to the release notification requirements of CERCLA. If you have a release of a CERCLA hazardous substance, you must comply with the emergency release notification requirements of this part and the release notification requirements of CERCLA section 103, codified at 40 CFR part 302. Use this table to determine which emergency release notification requirements apply to your release:

If a reportable quantity of a substance is released within a 24-hour period at your facility	And if the release is reportable under EPCRA Section 304, you must	And if the release is reportable under CERCLA Section 103, you must
(a) And the substance is on BOTH the list of EHSs (Appendices A and B of this part) AND the list of CERCLA Hazardous Substances (40 CFR 302.4).	Notify the LEPC and the SERC in accordance with §§ 355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see § 355.42(b)).	Comply with the release notification requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the NRC at 800–424–8802.
(b) And the substance is on the list of CERCLA Hazardous Substances (40 CFR 302.4) and not on the list of EHSs (Appendices A and B of this part).	Notify the LEPC and the SERC, in accordance with §§ 355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see in § 355.42(b)).	Comply with the release notification requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the NRC at 800–424–8802.
(c) And the substance is on the list of EHSs (Appendices A and B of this part) and not the list of CERCLA Hazardous Substances (40 CFR 302.4).	Notify the LEPC and the SERC in accordance with §§ 355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see § 355.42(b)).	

Note: This table only applies to reportable releases, not to exempt releases.

§ 355.61 How are key words in this part defined?

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

CERCLA hazardous substance means a substance defined in section 101(14) of CERCLA and listed in Table 302.4 of 40 CFR 302.4.

Chief Executive Officer of the Tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

Environment includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

EPCRA means the Emergency Planning and Community Right-To-Know Act of 1986.

Extremely hazardous substance (EHS) means a substance listed in Appendices A and B of this part.

Facility means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person). *Facility* includes manmade structures, as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

Hazardous chemical means any hazardous chemical as defined under 29 CFR 1910.1200(c), except that this term does not include:

(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 to the extent it is used:

(i) 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;

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

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

Indian Country means Indian country defined in 18 U.S.C. 1151 as:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or Tribe means those Tribes federally recognized by the Secretary of the Interior.

LEPC means the Local Emergency Planning Committee appointed by the State Emergency Response Commission.

Medium or media means the environment (i.e., air, water, land).

Mixture means, for the purposes of 40 CFR part 355, a heterogeneous association of substances where the various individual substances retain their identities and can usually be separated by mechanical means. This definition includes, for the purposes of 40 CFR part 355, solutions but does not include alloys or amalgams.

Person means any individual, trust, firm, joint stock company, corporation (including a government corporation),

partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, EHS, or CERCLA hazardous substance.

Reportable quantity means, for any CERCLA hazardous substance, the quantity established in Table 302.4 of 40 CFR 302.4, for such substance. For any EHS, reportable quantity means the quantity established in Appendices A and B of this part for such substance. Unless and until superseded by regulations establishing a reportable quantity for newly listed EHSs or CERCLA hazardous substances, a weight of 1 pound shall be the reportable quantity.

SERC means the State Emergency Response Commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, SERC means the Emergency Response Commission for the Tribe under whose jurisdiction the facility is located. In the absence of a SERC for a State or Indian Tribe, the Governor or the chief executive officer of the tribe, respectively, shall be the SERC. Where there is a cooperative agreement between a State and a Tribe, the SERC shall be the entity identified in the agreement.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdiction and Indian Country.

Threshold planning quantity means, for a substance listed in Appendices A and B of this part, the quantity listed in the column ''threshold planning quantity'' for that substance.

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
75–86–5	Acetone Cyanohydrin		10	1,000
1752–30–3	Acetone Thiosemicarbazide		1,000	1,000/10,000
107–02–8	Acrolein		1	500
79–06–1	Acrylamide	f	5,000	1,000/10,000
107–13–1	Acrylonitrile	f	100	10,000
814–68–6	Acrylyl Chloride	d	100	100
111–69–3	Adiponitrile	f	1,000	1,000
116–06–3	Aldicarb	b	1	100/10,000
309–00–2	Aldrin		1	500/10,000
107–18–6	Allyl Alcohol		100	1,000
107–11–9	Allylamine		500	500
20859–73–8	Aluminum Phosphide	a	100	500
54–62–6	Aminopterin		500	500/10,000
78–53–5	Amiton		500	500
3734–97–2	Amiton Oxalate		100	100/10,000
7664–41–7	Ammonia	f	100	500
300–62–9	Amphetamine		1,000	1,000
62–53–3	Aniline	f	5,000	1,000
88–05–1	Aniline, 2,4,6-Trimethyl-		500	500
7783–70–2	Antimony Pentafluoride		500	500
1397–94–0	Antimycin A	b	1,000	1,000/10,000
86–88–4	ANTU		100	500/10,000
1303–28–2	Arsenic Pentoxide		1	100/10,000
1327–53–3	Arsenous Oxide	d	1	100/10,000
7784–34–1	Arsenous Trichloride		1	500
7784–42–1	Arsine		100	100
2642–71–9	Azinphos-Ethyl		100	100/10,000
86–50–0	Azinphos-Methyl		1	10/10,000
98–87–3	Benzal Chloride		5,000	500
98–16–8	Benzenamine, 3-(Trifluoromethyl)-		500	500
100–14–1	Benzene, 1-(Chloromethyl)-4-Nitro-		500	500/10,000
98–05–5	Benzenearsonic Acid		10	10/10,000
3615–21–2	Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)-	c	500	500/10,000
98–07–7	Benzotrichloride		10	100
100–44–7	Benzyl Chloride		100	500
140–29–4	Benzyl Cyanide	d	500	500
15271–41–7	Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha,2-beta,4-alpha,5-alpha,6E))-.		500	500/10,000
534–07–6	Bis(Chloromethyl) Ketone		10	10/10,000
4044–65–9	Bitoscanate		500	500/10,000
10294–34–5	Boron Trichloride		500	500
7637–07–2	Boron Trifluoride		500	500
353–42–4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
28772–56–7	Bromadiolone		100	100/10,000
7726–95–6	Bromine	f	500	500
1306–19–0	Cadmium Oxide		100	100/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
2223–93–0	Cadmium Stearate	b	1,000	1,000/10,000
7778–44–1	Calcium Arsenate		1	500/10,000
8001–35–2	Camphechlor		1	500/10,000
56–25–7	Cantharidin		100	100/10,000
51–83–2	Carbachol Chloride		500	500/10,000
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-.		100	100/10,000
1563–66–2	Carbofuran		10	10/10,000
75–15–0	Carbon Disulfide	f	100	10,000
786–19–6	Carbophenothion		500	500
57–74–9	Chlordane		1	1,000
470–90–6	Chlorfenvinfos		500	500
7782–50–5	Chlorine		10	100
24934–91–6	Chlormephos		500	500
999–81–5	Chlormequat Chloride	d	100	100/10,000
79–11–8	Chloroacetic Acid		100	100/10,000
107–07–3	Chloroethanol		500	500
627–11–2	Chloroethyl Chloroformate		1,000	1,000
67–66–3	Chloroform	f	10	10,000
542–88–1	Chloromethyl Ether	d	10	100
107–30–2	Chloromethyl Methyl Ether	b	10	100
3691–35–8	Chlorophacinone		100	100/10,000
1982–47–4	Chloroxuron		500	500/10,000
21923–23–9	Chlorthiophos	d	500	500
10025–73–7	Chromic Chloride		1	1/10,000
62207–76–5	Cobalt, ((2,2′-(1,2-Ethanediylbis (Nitrilomethylidyne)) Bis(6-Fluorophenolato))(2-)-N,N′,O,O′)-.		100	100/10,000
10210–68–1	Cobalt Carbonyl	d	10	10/10,000
64–86–8	Colchicine	d	10	10/10,000
56–72–4	Coumaphos		10	100/10,000
5836–29–3	Coumatetralyl		500	500/10,000
95–48–7	Cresol, o-		100	1,000/10,000
535–89–7	Crimidine		100	100/10,000
4170–30–3	Crotonaldehyde		100	1,000
123–73–9	Crotonaldehyde, (E)-		100	1,000
506–68–3	Cyanogen Bromide		1,000	500/10,000
506–78–5	Cyanogen Iodide		1,000	1,000/10,000
2636–26–2	Cyanophos		1,000	1,000
675–14–9	Cyanuric Fluoride		100	100
66–81–9	Cycloheximide		100	100/10,000
108–91–8	Cyclohexylamine	f	10,000	10,000
17702–41–9	Decaborane(14)		500	500/10,000
8065–48–3	Demeton		500	500
919–86–8	Demeton-S-Methyl		500	500
10311–84–9	Dialifor		100	100/10,000
19287–45–7	Diborane		100	100
111–44–4	Dichloroethyl ether		10	10,000
149–74–6	Dichloromethylphenylsilane		1,000	1,000
62–73–7	Dichlorvos		10	1,000
141–66–2	Dicrotophos		100	100
1464–53–5	Diepoxybutane		10	500
814–49–3	Diethyl Chlorophosphate	d	500	500
71–63–6	Digitoxin	b	100	100/10,000
2238–07–5	Diglycidyl Ether		1,000	1,000
20830–75–5	Digoxin	d	10	10/10,000
115–26–4	Dimefox		500	500
60–51–5	Dimethoate		10	500/10,000
2524–03–0	Dimethyl Phosphorochloridothioate		500	500
77–78–1	Dimethyl sulfate		100	500
75–78–5	Dimethyldichlorosilane	d	500	500
57–14–7	Dimethylhydrazine		10	1,000
99–98–9	Dimethyl-p-Phenylenediamine		10	10/10,000
644–64–4	Dimetilan		1	500/10,000
534–52–1	Dinitrocresol		10	10/10,000
88–85–7	Dinoseb		1,000	100/10,000
1420–07–1	Dinoterb		500	500/10,000
78–34–2	Dioxathion		500	500
82–66–6	Diphacinone		10	10/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
152–16–9	Diphosphoramide, Octamethyl-		100	100
298–04–4	Disulfoton		1	500
514–73–8	Dithiazanine Iodide		500	500/10,000
541–53–7	Dithiobiuret		100	100/10,000
316–42–7	Emetine, Dihydrochloride	d	1	1/10,000
115–29–7	Endosulfan		1	10/10,000
2778–04–3	Endothion		500	500/10,000
72–20–8	Endrin		1	500/10,000
106–89–8	Epichlorohydrin	f	100	1,000
2104–64–5	EPN		100	100/10,000
50–14–6	Ergocalciferol	b	1,000	1,000/10,000
379–79–3	Ergotamine Tartrate		500	500/10,000
1622–32–8	Ethanesulfonyl Chloride, 2-Chloro-		500	500
10140–87–1	Ethanol, 1,2-Dichloro-, Acetate		1,000	1,000
563–12–2	Ethion		10	1,000
13194–48–4	Ethoprophos		1,000	1,000
538–07–8	Ethylbis(2-Chloroethyl)Amine	d	500	500
371–62–0	Ethylene Fluorohydrin	b, d	10	10
75–21–8	Ethylene Oxide	f	10	1,000
107–15–3	Ethylenediamine		5,000	10,000
151–56–4	Ethyleneimine		1	500
542–90–5	Ethylthiocyanate		10,000	10,000
22224–92–6	Fenamiphos		10	10/10,000
115–90–2	Fensulfothion	d	500	500
4301–50–2	Fluenetil		100	100/10,000
7782–41–4	Fluorine	e	10	500
640–19–7	Fluoroacetamide		100	100/10,000
144–49–0	Fluoroacetic Acid		10	10/10,000
359–06–8	Fluoroacetyl Chloride	b	10	10
51–21–8	Fluorouracil		500	500/10,000
944–22–9	Fonofos		500	500
50–00–0	Formaldehyde	f	100	500
107–16–4	Formaldehyde Cyanohydrin	d	1,000	1,000
23422–53–9	Formetanate Hydrochloride	d	100	500/10,000
2540–82–1	Formothion		100	100
17702–57–7	Formparanate		100	100/10,000
21548–32–3	Fosthietan		500	500
3878–19–1	Fuberidazole		100	100/10,000
110–00–9	Furan		100	500
13450–90–3	Gallium Trichloride		500	500/10,000
77–47–4	Hexachlorocyclopentadiene	d	10	100
4835–11–4	Hexamethylenediamine, N,N′-Dibutyl-		500	500
302–01–2	Hydrazine		1	1,000
74–90–8	Hydrocyanic Acid		10	100
7647–01–0	Hydrogen Chloride (gas only)	f	5,000	500
7664–39–3	Hydrogen Fluoride		100	100
7722–84–1	Hydrogen Peroxide (Conc > 52%)	f	1,000	1,000
7783–07–5	Hydrogen Selenide		10	10
7783–06–4	Hydrogen Sulfide	f	100	500
123–31–9	Hydroquinone	f	100	500/10,000
13463–40–6	Iron, Pentacarbonyl-		100	100
297–78–9	Isobenzan		100	100/10,000
78–82–0	Isobutyronitrile	d	1,000	1,000
102–36–3	Isocyanic Acid, 3,4-Dichlorophenyl Ester		500	500/10,000
465–73–6	Isodrin		1	100/10,000
55–91–4	Isofluorphate	b	100	100
4098–71–9	Isophorone Diisocyanate	g	500	500
108–23–6	Isopropyl Chloroformate		1,000	1,000
119–38–0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
78–97–7	Lactonitrile		1,000	1,000
21609–90–5	Leptophos		500	500/10,000
541–25–3	Lewisite	b, d	10	10
58–89–9	Lindane		1	1,000/10,000
7580–67–8	Lithium Hydride	a	100	100
109–77–3	Malononitrile		1,000	500/10,000
12108–13–3	Manganese, Tricarbonyl Methylcyclopentadienyl	d	100	100
51–75–2	Mechlorethamine	b	10	10
950–10–7	Mephosfolan		500	500

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
1600–27–7	Mercuric Acetate		500	500/10,000
7487–94–7	Mercuric Chloride		500	500/10,000
21908–53–2	Mercuric Oxide		500	500/10,000
10476–95–6	Methacrolein Diacetate		1,000	1,000
760–93–0	Methacrylic Anhydride		500	500
126–98–7	Methacrylonitrile	d	1,000	500
920–46–7	Methacryloyl Chloride		100	100
30674–80–7	Methacryloyloxyethyl Isocyanate	d	100	100
10265–92–6	Methamidophos		100	100/10,000
558–25–8	Methanesulfonyl Fluoride		1,000	1,000
950–37–8	Methidathion		500	500/10,000
2032–65–7	Methiocarb		10	500/10,000
16752–77–5	Methomyl	d	100	500/10,000
151–38–2	Methoxyethylmercuric Acetate		500	500/10,000
80–63–7	Methyl 2-Chloroacrylate		500	500
74–83–9	Methyl Bromide	f	1,000	1,000
79–22–1	Methyl Chloroformate	d	1,000	500
60–34–4	Methyl Hydrazine		10	500
624–83–9	Methyl Isocyanate		10	500
556–61–6	Methyl Isothiocyanate	a	500	500
74–93–1	Methyl Mercaptan	f	100	500
3735–23–7	Methyl Phenkapton		500	500
676–97–1	Methyl Phosphonic Dichloride	a	100	100
556–64–9	Methyl Thiocyanate		10,000	10,000
78–94–4	Methyl Vinyl Ketone		10	10
502–39–6	Methylmercuric Dicyanamide		500	500/10,000
75–79–6	Methyltrichlorosilane	d	500	500
1129–41–5	Metolcarb		1,000	100/10,000
7786–34–7	Mevinphos		10	500
315–18–4	Mexacarbate	d	1,000	500/10,000
50–07–7	Mitomycin C		10	500/10,000
6923–22–4	Monocrotophos		10	10/10,000
2763–96–4	Muscimol		1,000	500/10,000
505–60–2	Mustard Gas	d	500	500
13463–39–3	Nickel Carbonyl		10	1
54–11–5	Nicotine	b	100	100
65–30–5	Nicotine Sulfate		100	100/10,000
7697–37–2	Nitric Acid		1,000	1,000
10102–43–9	Nitric Oxide	b	10	100
98–95–3	Nitrobenzene	f	1,000	10,000
1122–60–7	Nitrocyclohexane		500	500
10102–44–0	Nitrogen Dioxide		10	100
62–75–9	Nitrosodimethylamine	d	10	1,000
991–42–4	Norbormide		100	100/10,000
0	Organorhodium Complex (PMN–82–147)		10	10/10,000
630–60–4	Ouabain	b	100	100/10,000
23135–22–0	Oxamyl		100	100/10,000
78–71–7	Oxetane, 3,3-Bis(Chloromethyl)-		500	500
2497–07–6	Oxydisulfoton	d	500	500
10028–15–6	Ozone		100	100
1910–42–5	Paraquat Dichloride		10	10/10,000
2074–50–2	Paraquat Methosulfate		10	10/10,000
56–38–2	Parathion	b	10	100
298–00–0	Parathion-Methyl	b	100	100/10,000
12002–03–8	Paris Green		1	500/10,000
19624–22–7	Pentaborane		500	500
2570–26–5	Pentadecylamine		100	100/10,000
79–21–0	Peracetic Acid		500	500
594–42–3	Perchloromethylmercaptan		100	500
108–95–2	Phenol		1,000	500/10,000
4418–66–0	Phenol, 2,2′-Thiobis(4-Chloro-6-Methyl)-		100	100/10,000
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000
58–36–6	Phenoxarsine, 10,10′-Oxydi-		500	500/10,000
696–28–6	Phenyl Dichloroarsine	d	1	500
59–88–1	Phenylhydrazine Hydrochloride		1,000	1,000/10,000
62–38–4	Phenylmercury Acetate		100	500/10,000
2097–19–0	Phenylsilatrane	d	100	100/10,000
103–85–5	Phenylthiourea		100	100/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
298–02–2	Phorate		10	10
4104–14–7	Phosacetim		100	100/10,000
947–02–4	Phosfolan		100	100/10,000
75–44–5	Phosgene	f	10	10
13171–21–6	Phosphamidon		100	100
7803–51–2	Phosphine		100	500
2703–13–1	Phosphonothioic Acid, Methyl-, O-Ethyl O-(4-(Methylthio) Phenyl) Ester.		500	500
50782–69–9	Phosphonothioic Acid, Methyl-, S-(2-(Bis(1Methylethyl)Amino)Ethyl) O-Ethyl Ester.		100	100
2665–30–7	Phosphonothioic Acid, Methyl-, O-(4-Nitrophenyl) O-Phenyl Ester		500	500
3254–63–5	Phosphoric Acid, Dimethyl 4-(Methylthio)Phenyl Ester		500	500
2587–90–8	Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester	b, c	500	500
7723–14–0	Phosphorus	a, d	1	100
10025–87–3	Phosphorus Oxychloride		1,000	500
10026–13–8	Phosphorus Pentachloride	a	500	500
7719–12–2	Phosphorus Trichloride		1,000	1,000
57–47–6	Physostigmine		100	100/10,000
57–64–7	Physostigmine, Salicylate (1:1)		100	100/10,000
124–87–8	Picrotoxin		500	500/10,000
110–89–4	Piperidine		1,000	1,000
23505–41–1	Pirimifos-Ethyl		1,000	1,000
10124–50–2	Potassium Arsenite		1	500/10,000
151–50–8	Potassium Cyanide	a	10	100
506–61–6	Potassium Silver Cyanide	a	1	500
2631–37–0	Promecarb	d	1,000	500/10,000
106–96–7	Propargyl Bromide		10	10
57–57–8	Propiolactone, Beta-		10	500
107–12–0	Propionitrile		10	500
542–76–7	Propionitrile, 3-Chloro-		1,000	1,000
70–69–9	Propiophenone, 4-Amino-	c	100	100/10,000
109–61–5	Propyl Chloroformate		500	500
75–56–9	Propylene Oxide	f	100	10,000
75–55–8	Propyleneimine		1	10,000
2275–18–5	Prothoate		100	100/10,000
129–00–0	Pyrene	b	5,000	1,000/10,000
140–76–1	Pyridine, 2-Methyl-5-Vinyl-		500	500
504–24–5	Pyridine, 4-Amino-	d	1,000	500/10,000
1124–33–0	Pyridine, 4-Nitro-,l-Oxide		500	500/10,000
53558–25–1	Pyriminil	d	100	100/10,000
14167–18–1	Salcomine		500	500/10,000
107–44–8	Sarin	d	10	10
7783–00–8	Selenious Acid		10	1,000/10,000
7791–23–3	Selenium Oxychloride		500	500
563–41–7	Semicarbazide Hydrochloride		1,000	1,000/10,000
3037–72–7	Silane, (4-Aminobutyl)Diethoxymethyl-		1,000 1,00	0
7631–89–2	Sodium Arsenate		1	1,000/10,000
7784–46–5	Sodium Arsenite		1	500/10,000
26628–22–8	Sodium Azide ($Na(N_3)$)	a	1,000	500
124–65–2	Sodium Cacodylate		100	100/10,000
143–33–9	Sodium Cyanide (Na(CN))	a	10	100
62–74–8	Sodium Fluoroacetate		10	10/10,000
13410–01–0	Sodium Selenate		100	100/10,000
10102–18–8	Sodium Selenite	d	100	100/10,000
10102–20–2	Sodium Tellurite		500	500/10,000
900–95–8	Stannane, Acetoxytriphenyl-	c	500	500/10,000
57–24–9	Strychnine	b	10	100/10,000
60–41–3	Strychnine Sulfate		10	100/10,000
3689–24–5	Sulfotep		100	500
3569–57–1	Sulfoxide, 3-Chloropropyl Octyl		500	500
7446–09–5	Sulfur Dioxide	f	500	500
7783–60–0	Sulfur Tetrafluoride		100	100
7446–11–9	Sulfur Trioxide	a	100	100
7664–93–9	Sulfuric Acid		1,000	1,000
77–81–6	Tabun	b, d	10	10
7783–80–4	Tellurium Hexafluoride	e	100	100
107–49–3	TEPP		10	100
13071–79–9	Terbufos	d	100	100

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
78–00–2	Tetraethyllead	b	10	100
597–64–8	Tetraethyltin	b	100	100
75–74–1	Tetramethyllead	b, f	100	100
509–14–8	Tetranitromethane		10	500
10031–59–1	Thallium Sulfate	d	100	100/10,000
6533–73–9	Thallous Carbonate	b, d	100	100/10,000
7791–12–0	Thallous Chloride	b, d	100	100/10,000
2757–18–8	Thallous Malonate	b, d	100	100/10,000
7446–18–6	Thallous Sulfate		100	100/10,000
2231–57–4	Thiocarbazide		1,000	1,000/10,000
39196–18–4	Thiofanox		100	100/10,000
297–97–2	Thionazin		100	500
108–98–5	Thiophenol		100	500
79–19–6	Thiosemicarbazide		100	100/10,000
5344–82–1	Thiourea, (2-Chlorophenyl)-		100	100/10,000
614–78–8	Thiourea, (2-Methylphenyl)-		500	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100
584–84–9	Toluene 2,4-Diisocyanate		100	500
91–08–7	Toluene 2,6-Diisocyanate		100	100
110–57–6	Trans-1,4-Dichlorobutene		500	500
1031–47–6	Triamiphos		500	500/10,000
24017–47–8	Triazofos		500	500
76–02–8	Trichloroacetyl Chloride		500	500
115–21–9	Trichloroethylsilane	d	500	500
327–98–0	Trichloronate	e	500	500
98–13–5	Trichlorophenylsilane	d	500	500
1558–25–4	Trichloro(Chloromethyl)Silane		100	100
27137–85–5	Trichloro(Dichlorophenyl) Silane		500	500
998–30–1	Triethoxysilane		500	500
75–77–4	Trimethylchlorosilane		1,000	1,000
824–11–3	Trimethylolpropane Phosphite	d	100	100/10,000
1066–45–1	Trimethyltin Chloride		500	500/10,000
639–58–7	Triphenyltin Chloride		500	500/10,000
555–77–1	Tris(2-Chloroethyl)Amine	d	100	100
2001–95–8	Valinomycin	b	1,000	1,000/10,000
1314–62–1	Vanadium Pentoxide		1,000	100/10,000
108–05–4	Vinyl Acetate Monomer	f	5,000	1,000
81–81–2	Warfarin		100	500/10,000
129–06–6	Warfarin Sodium	d	100	100/10,000
28347–13–9	Xylylene Dichloride		100	100/10,000
58270–08–9	Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino)Carbonyl) Oxy)Imino)Pentanenitrile)-, (T-4)-.		100	100/10,000
1314–84–7	Zinc Phosphide	a	100	500

* Only the statutory or final RQ is shown. For more information, see 40 CFR 355.61.

Notes:

a. This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.

b. The calculated TPQ changed after technical review as described in a technical support document for the final rule, April 22, 1987.

c. Chemicals added by final rule, April 22, 1987.

d. Revised TPQ based on new or re-evaluated toxicity data, April 22, 1987.

e. The TPQ was revised due to calculation error, April 22, 1987.

f. Chemicals on the original list that do not meet toxicity criteria but because of their acute lethality, high production volume and known risk are considered chemicals of concern (''Other chemicals''), November 17, 1986 and February 15, 1990.

g. The TPQ was recalculated (September 8, 2003) since it was mistakenly calculated in the April 22, 1987 final rule under the wrong assumption that this chemical is a reactive solid, when in fact it is a liquid. RQ for this chemical was adjusted on September 11, 2006.

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
0	Organorhodium Complex (PMN–82–147)		10	10/10,000
50–00–0	Formaldehyde	f	100	500
50–07–7	Mitomycin C		10	500/10,000
50–14–6	Ergocalciferol	b	1,000	1,000/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
51–21–8	Fluorouracil		500	500/10,000
51–75–2	Mechlorethamine	b	10	10
51–83–2	Carbachol Chloride		500	500/10,000
54–11–5	Nicotine	b	100	100
54–62–6	Aminopterin		500	500/10,000
55–91–4	Isofluorphate	b	100	100
56–25–7	Cantharidin		100	100/10,000
56–38–2	Parathion	b	10	100
56–72–4	Coumaphos		10	100/10,000
57–14–7	Dimethylhydrazine		10	1,000
57–24–9	Strychnine	b	10	100/10,000
57–47–6	Physostigmine		100	100/10,000
57–57–8	Propiolactone, Beta-		10	500
57–64–7	Physostigmine, Salicylate (1:1)		100	100/10,000
57–74–9	Chlordane		1	1,000
58–36–6	Phenoxarsine, 10,10′-Oxydi-		500	500/10,000
58–89–9	Lindane		1	1,000/10,000
59–88–1	Phenylhydrazine Hydrochloride		1,000	1,000/10,000
60–34–4	Methyl Hydrazine		10	500
60–41–3	Strychnine sulfate		10	100/10,000
60–51–5	Dimethoate		10	500/10,000
62–38–4	Phenylmercury Acetate		100	500/10,000
62–53–3	Aniline	f	5,000	1,000
62–73–7	Dichlorvos		10	1,000
62–74–8	Sodium Fluoroacetate		10	10/10,000
62–75–9	Nitrosodimethylamine	d	10	1,000
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate		10	500/10,000
64–86–8	Colchicine	d	10	10/10,000
65–30–5	Nicotine sulfate		100	100/10,000
66–81–9	Cycloheximide		100	100/10,000
67–66–3	Chloroform	f	10	10,000
70–69–9	Propiophenone, 4-Amino-	c	100	100/10,000
71–63–6	Digitoxin	b	100	100/10,000
72–20–8	Endrin		1	500/10,000
74–83–9	Methyl Bromide	f	1,000	1,000
74–90–8	Hydrocyanic Acid		10	100
74–93–1	Methyl Mercaptan	f	100	500
75–15–0	Carbon Disulfide	f	100	10,000
75–21–8	Ethylene Oxide	f	10	1,000
75–44–5	Phosgene	f	10	10
75–55–8	Propyleneimine		1	10,000
75–56–9	Propylene Oxide	f	100	10,000
75–74–1	Tetramethyllead	b, f	100	100
75–77–4	Trimethylchlorosilane		1,000	1,000
75–78–5	Dimethyldichlorosilane	d	500	500
75–79–6	Methyltrichlorosilane	d	500	500
75–86–5	Acetone Cyanohydrin		10	1,000
76–02–8	Trichloroacetyl Chloride		500	500
77–47–4	Hexachlorocyclopentadiene	d	10	100
77–78–1	Dimethyl Sulfate		100	500
77–81–6	Tabun	b, d	10	10
78–00–2	Tetraethyllead	b	10	100
78–34–2	Dioxathion		500	500
78–53–5	Amiton		500	500
78–71–7	Oxetane, 3,3-Bis(Chloromethyl)-		500	500
78–82–0	Isobutyronitrile	d	1,000	1,000
78–94–4	Methyl Vinyl Ketone		10	10
78–97–7	Lactonitrile		1,000	1,000
79–06–1	Acrylamide	f	5,000	1,000/10,000
79–11–8	Chloroacetic Acid		100	100/10,000
79–19–6	Thiosemicarbazide		100	100/10,000
79–21–0	Peracetic Acid		500	500
79–22–1	Methyl Chloroformate	d	1,000	500
80–63–7	Methyl 2-Chloroacrylate		500	500
81–81–2	Warfarin		100	500/10,000
82–66–6	Diphacinone		10	10/10,000
86–50–0	Azinphos-Methyl		1	10/10,000
86–88–4	ANTU		100	500/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
88–05–1	Aniline, 2,4,6-Trimethyl-		500	500
88–85–7	Dinoseb		1,000	100/10,000
91–08–7	Toluene 2,6-Diisocyanate		100	100
95–48–7	Cresol, o-		100	1,000/10,000
98–05–5	Benzenearsonic Acid		10	10/10,000
98–07–7	Benzotrichloride		10	100
98–13–5	Trichlorophenylsilane	d	500	500
98–16–8	Benzenamine, 3-(Trifluoromethyl)-		500	500
98–87–3	Benzal Chloride		5,000	500
98–95–3	Nitrobenzene	f	1,000	10,000
99–98–9	Dimethyl-p-Phenylenediamine		10	10/10,000
100–14–1	Benzene, 1-(Chloromethyl)-4-Nitro-		500	500/10,000
100–44–7	Benzyl Chloride		100	500
102–36–3	Isocyanic Acid, 3,4-Dichlorophenyl Ester		500	500/10,000
103–85–5	Phenylthiourea		100	100/10,000
106–89–8	Epichlorohydrin	f	100	1,000
106–96–7	Propargyl Bromide		10	10
107–02–8	Acrolein		1	500
107–07–3	Chloroethanol		500	500
107–11–9	Allylamine		500	500
107–12–0	Propionitrile		10	500
107–13–1	Acrylonitrile	f	100	10,000
107–15–3	Ethylenediamine		5,000	10,000
107–16–4	Formaldehyde Cyanohydrin	d	1,000	1,000
107–18–6	Allyl Alcohol		100	1,000
107–30–2	Chloromethyl Methyl Ether	b	10	100
107–44–8	Sarin	d	10	10
107–49–3	TEPP		10	100
108–05–4	Vinyl Acetate Monomer	f	5,000	1,000
108–23–6	Isopropyl Chloroformate		1,000	1,000
108–91–8	Cyclohexylamine	f	10,000	10,000
108–95–2	Phenol		1,000	500/10,000
108–98–5	Thiophenol		100	500
109–61–5	Propyl Chloroformate		500	500
109–77–3	Malononitrile		1,000	500/10,000
110–00–9	Furan		100	500
110–57–6	Trans-1,4-Dichlorobutene		500	500
110–89–4	Piperidine		1,000	1,000
111–44–4	Dichloroethyl Ether		10	10,000
111–69–3	Adiponitrile	f	1,000	1,000
115–21–9	Trichloroethylsilane	d	500	500
115–26–4	Dimefox		500	500
115–29–7	Endosulfan		1	10/10,000
115–90–2	Fensulfothion	d	500	500
116–06–3	Aldicarb	b	1	100/10,000
119–38–0	Isopropylmethyl-pyrazolyl Dimethylcarbamate		100	500
123–31–9	Hydroquinone	f	100	500/10,000
123–73–9	Crotonaldehyde, (E)-		100	1,000
124–65–2	Sodium Cacodylate		100	100/10,000
124–87–8	Picrotoxin		500	500/10,000
126–98–7	Methacrylonitrile	d	1,000	500
129–00–0	Pyrene	b	5,000	1,000/10,000
129–06–6	Warfarin Sodium	d	100	100/10,000
140–29–4	Benzyl Cyanide	d	500	500
140–76–1	Pyridine, 2-Methyl-5-Vinyl-		500	500
141–66–2	Dicrotophos		100	100
143–33–9	Sodium Cyanide (Na(CN))	a	10	100
144–49–0	Fluoroacetic Acid		10	10/10,000
149–74–6	Dichloromethylphenylsilane		1,000	1,000
151–38–2	Methoxyethylmercuric Acetate		500	500/10,000
151–50–8	Potassium Cyanide	a	10	100
151–56–4	Ethyleneimine		1	500
152–16–9	Diphosphoramide, Octamethyl-		100	100
297–78–9	Isobenzan		100	100/10,000
297–97–2	Thionazin		100	500
298–00–0	Parathion-Methyl	b	100	100/10,000
298–02–2	Phorate		10	10
298–04–4	Disulfoton		1	500

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
300–62–9	Amphetamine		1,000	1,000
302–01–2	Hydrazine		1	1,000
309–00–2	Aldrin		1	500/10,000
315–18–4	Mexacarbate		1,000	500/10,000
316–42–7	Emetine, Dihydrochloride	d	1	1/10,000
327–98–0	Trichloronate	e	500	500
353–42–4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
359–06–8	Fluoroacetyl Chloride	b	10	10
371–62–0	Ethylene Fluorohydrin	b, d	10	10
379–79–3	Ergotamine Tartrate		500	500/10,000
465–73–6	Isodrin		1	100/10,000
470–90–6	Chlorfenvinfos		500	500
502–39–6	Methylmercuric Dicyanamide		500	500/10,000
504–24–5	Pyridine, 4-Amino-	d	1,000	500/10,000
505–60–2	Mustard Gas	d	500	500
506–61–6	Potassium Silver Cyanide	a	1	500
506–68–3	Cyanogen Bromide		1,000	500/10,000
506–78–5	Cyanogen Iodide		1,000	1,000/10,000
509–14–8	Tetranitromethane		10	500
514–73–8	Dithiazanine Iodide		500	500/10,000
534–07–6	Bis(Chloromethyl) Ketone		10	10/10,000
534–52–1	Dinitrocresol		10	10/10,000
535–89–7	Crimidine		100	100/10,000
538–07–8	Ethylbis(2-Chloroethyl)Amine	d	500	500
541–25–3	Lewisite	b, d	10	10
541–53–7	Dithiobiuret		100	100/10,000
542–76–7	Propionitrile, 3-Chloro-		1,000	1,000
542–88–1	Chloromethyl Ether	d	10	100
542–90–5	Ethylthiocyanate		10,000	10,000
555–77–1	Tris(2-Chloroethyl)Amine	d	100	100
556–61–6	Methyl Isothiocyanate	a	500	500
556–64–9	Methyl Thiocyanate		10,000	10,000
558–25–8	Methanesulfonyl Fluoride		1,000	1,000
563–12–2	Ethion		10	1,000
563–41–7	Semicarbazide Hydrochloride		1,000	1,000/10,000
584–84–9	Toluene 2,4-Diisocyanate		100	500
594–42–3	Perchloromethylmercaptan		100	500
597–64–8	Tetraethyltin	b	100	100
614–78–8	Thiourea, (2-Methylphenyl)-		500	500/10,000
624–83–9	Methyl Isocyanate		10	500
627–11–2	Chloroethyl Chloroformate		1,000	1,000
630–60–4	Ouabain	b	100	100/10,000
639–58–7	Triphenyltin Chloride		500	500/10,000
640–19–7	Fluoroacetamide		100	100/10,000
644–64–4	Dimetilan		1	500/10,000
675–14–9	Cyanuric Fluoride		100	100
676–97–1	Methyl Phosphonic Dichloride	a	100	100
696–28–6	Phenyl Dichloroarsine	d	1	500
760–93–0	Methacrylic Anhydride		500	500
786–19–6	Carbophenothion		500	500
814–49–3	Diethyl Chlorophosphate	d	500	500
814–68–6	Acrylyl Chloride	d	100	100
824–11–3	Trimethylolpropane Phosphite	d	100	100/10,000
900–95–8	Stannane, Acetoxytriphenyl-	c	500	500/10,000
919–86–8	Demeton-S-Methyl		500	500
920–46–7	Methacryloyl Chloride		100	100
944–22–9	Fonofos		500	500
947–02–4	Phosfolan		100	100/10,000
950–10–7	Mephosfolan		500	500
950–37–8	Methidathion		500	500/10,000
991–42–4	Norbormide		100	100/10,000
998–30–1	Triethoxysilane		500	500
999–81–5	Chlormequat Chloride	d	100	100/10,000
1031–47–6	Triamiphos		500	500/10,000
1066–45–1	Trimethyltin Chloride		500	500/10,000
1122–60–7	Nitrocyclohexane		500	500
1124–33–0	Pyridine, 4-Nitro-,1-Oxide		500	500/10,000
1129–41–5	Metolcarb		1,000	100/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
1303–28–2	Arsenic Pentoxide		1	100/10,000
1306–19–0	Cadmium Oxide		100	100/10,000
1314–62–1	Vanadium Pentoxide		1,000	100/10,000
1314–84–7	Zinc Phosphide	a	100	500
1327–53–3	Arsenous Oxide	d	1	100/10,000
1397–94–0	Antimycin A	b	1,000	1,000/10,000
1420–07–1	Dinoterb		500	500/10,000
1464–53–5	Diepoxybutane		10	500
1558–25–4	Trichloro(Chloromethyl)Silane		100	100
1563–66–2	Carbofuran		10	10/10,000
1600–27–7	Mercuric Acetate		500	500/10,000
1622–32–8	Ethanesulfonyl Chloride, 2-Chloro-		500	500
1752–30–3	Acetone Thiosemicarbazide		1,000	1,000/10,000
1910–42–5	Paraquat Dichloride		10	10/10,000
1982–47–4	Chloroxuron		500	500/10,000
2001–95–8	Valinomycin	b	1,000	1,000/10,000
2032–65–7	Methiocarb		10	500/10,000
2074–50–2	Paraquat Methosulfate		10	10/10,000
2097–19–0	Phenylsilatrane	d	100	100/10,000
2104–64–5	EPN		100	100/10,000
2223–93–0	Cadmium Stearate	b	1,000	1,000/10,000
2231–57–4	Thiocarbazide		1,000	1,000/10,000
2238–07–5	Diglycidyl Ether		1,000	1,000
2275–18–5	Prothoate		100	100/10,000
2497–07–6	Oxydisulfoton	d	500	500
2524–03–0	Dimethyl Phosphorochloridothioate		500	500
2540–82–1	Formothion		100	100
2570–26–5	Pentadecylamine		100	100/10,000
2587–90–8	Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester	b, c	500	500
2631–37–0	Promecarb	d	1,000	500/10,000
2636–26–2	Cyanophos		1,000	1,000
2642–71–9	Azinphos-Ethyl		100	100/10,000
2665–30–7	Phosphonothioic Acid, Methyl-, O-(4-Nitrophenyl) O-Phenyl Ester		500	500
2703–13–1	Phosphonothioic Acid, Methyl-, O-Ethyl O-(4-(Methylthio)Phenyl) Ester.		500	500
2757–18–8	Thallous Malonate	b, d	100	100/10,000
2763–96–4	Muscimol		1,000	500/10,000
2778–04–3	Endothion		500	500/10,000
3037–72–7	Silane, (4-Aminobutyl)Diethoxymethyl-		1,000	1,000
3254–63–5	Phosphoric Acid, Dimethyl 4-(Methylthio)Phenyl Ester		500	500
3569–57–1	Sulfoxide, 3-Chloropropyl Octyl		500	500
3615–21–2	Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)-	c	500	500/10,000
3689–24–5	Sulfotep		100	500
3691–35–8	Chlorophacinone		100	100/10,000
3734–97–2	Amiton Oxalate		100	100/10,000
3735–23–7	Methyl Phenkapton		500	500
3878–19–1	Fuberidazole		100	100/10,000
4044–65–9	Bitoscanate		500	500/10,000
4098–71–9	Isophorone Diisocyanate	g	500	500
4104–14–7	Phosacetim		100	100/10,000
4170–30–3	Crotonaldehyde		100	1,000
4301–50–2	Fluenetil		100	100/10,000
4418–66–0	Phenol, 2,2′-Thiobis(4-Chloro-6-Methyl)-		100	100/10,000
4835–11–4	Hexamethylenediamine, N,N′-Dibutyl-		500	500
5344–82–1	Thiourea, (2-Chlorophenyl)-		100	100/10,000
5836–29–3	Coumatetralyl		500	500/10,000
6533–73–9	Thallous Carbonate	b, d	100	100/10,000
6923–22–4	Monocrotophos		10	10/10,000
7446–09–5	Sulfur Dioxide	f	500	500
7446–11–9	Sulfur Trioxide	a	100	100
7446–18–6	Thallous Sulfate		100	100/10,000
7487–94–7	Mercuric Chloride		500	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100
7580–67–8	Lithium Hydride	a	100	100
7631–89–2	Sodium Arsenate		1	1,000/10,000
7637–07–2	Boron Trifluoride		500	500
7647–01–0	Hydrogen Chloride (gas only)	f	5,000	500
7664–39–3	Hydrogen Fluoride		100	100

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
7664–41–7	Ammonia	f	100	500
7664–93–9	Sulfuric Acid		1,000	1,000
7697–37–2	Nitric Acid		1,000	1,000
7719–12–2	Phosphorus Trichloride		1,000	1,000
7722–84–1	Hydrogen Peroxide (Conc >52%)	f	1,000	1,000
7723–14–0	Phosphorus	a, d	1	100
7726–95–6	Bromine	f	500	500
7778–44–1	Calcium Arsenate		1	500/10,000
7782–41–4	Fluorine	e	10	500
7782–50–5	Chlorine		10	100
7783–00–8	Selenious Acid		10	1,000/10,000
7783–06–4	Hydrogen Sulfide	f	100	500
7783–07–5	Hydrogen Selenide		10	10
7783–60–0	Sulfur Tetrafluoride		100	100
7783–70–2	Antimony Pentafluoride		500	500
7783–80–4	Tellurium Hexafluoride	e	100	100
7784–34–1	Arsenous Trichloride		1	500
7784–42–1	Arsine		100	100
7784–46–5	Sodium Arsenite		1	500/10,000
7786–34–7	Mevinphos		10	500
7791–12–0	Thallous Chloride	b, d	100	100/10,000
7791–23–3	Selenium Oxychloride		500	500
7803–51–2	Phosphine		100	500
8001–35–2	Camphechlor		1	500/10,000
8065–48–3	Demeton		500	500
10025–73–7	Chromic Chloride		1	1/10,000
10025–87–3	Phosphorus Oxychloride		1,000	500
10026–13–8	Phosphorus Pentachloride	a	500	500
10028–15–6	Ozone		100	100
10031–59–1	Thallium Sulfate	d	100	100/10,000
10102–18–8	Sodium Selenite	d	100	100/10,000
10102–20–2	Sodium Tellurite		500	500/10,000
10102–43–9	Nitric Oxide	b	10	100
10102–44–0	Nitrogen Dioxide		10	100
10124–50–2	Potassium Arsenite		1	500/10,000
10140–87–1	Ethanol, 1,2-Dichloro-, Acetate		1,000	1,000
10210–68–1	Cobalt Carbonyl	d	10	10/10,000
10265–92–6	Methamidophos		100	100/10,000
10294–34–5	Boron Trichloride		500	500
10311–84–9	Dialifor		100	100/10,000
10476–95–6	Methacrolein Diacetate		1,000	1,000
12002–03–8	Paris Green		1	500/10,000
12108–13–3	Manganese, Tricarbonyl Methylcyclopentadienyl	d	100	100
13071–79–9	Terbufosh	d	100	100
13171–21–6	Phosphamidon		100	100
13194–48–4	Ethoprophos		1,000	1,000
13410–01–0	Sodium Selenate		100	100/10,000
13450–90–3	Gallium Trichloride		500	500/10,000
13463–39–3	Nickel Carbonyl		10	1
13463–40–6	Iron, Pentacarbonyl-		100	100
14167–18–1	Salcomine		500	500/10,000
15271–41–7	Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha,2-beta,4-alpha,5-alpha,6E))-.		500	500/10,000
16752–77–5	Methomyl	d	100	500/10,000
17702–41–9	Decaborane(14)		500	500/10,000
17702–57–7	Formparanate		100	100/10,000
19287–45–7	Diborane		100	100
19624–22–7	Pentaborane		500	500
20830–75–5	Digoxin	d	10	10/10,000
20859–73–8	Aluminum Phosphide	a	100	500
21548–32–3	Fosthietan		500	500
21609–90–5	Leptophos		500	500/10,000
21908–53–2	Mercuric Oxide		500	500/10,000
21923–23–9	Chlorthiophos	d	500	500
22224–92–6	Fenamiphos		10	10/10,000
23135–22–0	Oxamyl		100	100/10,000
23422–53–9	Formetanate Hydrochloride	d	100	500/10,000

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity * (pounds)	Threshold planning quantity (pounds)
23505–41–1	Pirimifos-Ethyl		1,000	1,000
24017–47–8	Triazofos		500	500
24934–91–6	Chlormephos		500	500
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-.		100	100/10,000
26628–22–8	Sodium Azide ($Na(N_3)$)	a	1,000	500
27137–85–5	Trichloro(Dichlorophenyl)Silane		500	500
28347–13–9	Xylylene Dichloride		100	100/10,000
28772–56–7	Bromadiolone		100	100/10,000
30674–80–7	Methacryloyloxyethyl Isocyanateh		100	100
39196–18–4	Thiofanox		100	100/10,000
50782–69–9	Phosphonothioic Acid, Methyl-, S-(2-(Bis(1-Methylethyl)Amino)Ethyl) O-Ethyl Ester.		100	100
53558–25–1	Pyriminil	d	100	100/10,000
58270–08–9	Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino) Carbonyl)Oxy) Imino)Pentanenitrile)-, (T–4)-.		100	100/10,000
62207–76–5	Cobalt, ((2,2′-(1,2-Ethanediylbis (Nitrilomethylidyne)) Bis(6-Fluorophenolato)) (2-)-N,N′,O,O′)-.		100	100/10,000

* Only the statutory or final RQ is shown. For more information, *see* 40 CFR 355.61.

Notes:

a. This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.

b. The calculated TPQ changed after technical review as described in a technical support document for the final rule, April 22, 1987.

c. Chemicals added by final rule, April 22, 1987.

d. Revised TPQ based on new or re-evaluated toxicity data, April 22, 1987.

e. The TPQ was revised due to calculation error, April 22, 1987.

f. Chemicals on the original list that do not meet toxicity criteria but because of their acute lethality, high production volume and known risk are considered chemicals of concern (''Other chemicals''). (November 17, 1986, and February 15, 1990.)

g. The TPQ was recalculated (September 8, 2003) since it was mistakenly calculated in the April 22, 1987, final rule under the wrong assumption that this chemical is a reactive solid, when in fact it is a liquid. RQ for this chemical was adjusted on September 11, 2006.

■ 2. Part 370 is revised to read as follows:

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

Subpart A—General Information

Subpart B—Who Must Comply

Subpart C—Reporting Requirements

How to Comply With MSDS Reporting

How To Comply With Inventory Reporting

Subpart D—Community Access to Information

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).

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) 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.

§ 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.

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) 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 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 for a hazardous chemical for which you have not submitted an MSDS 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.

§ 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 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 and meets the definition of hazardous chemical under the OSHA regulations found at 29 CFR 1910.1200(c).

§ 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 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.

§ 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:

If your mixture contains a hazardous chemical	To determine if the threshold level for that hazardous chemical is equaled or exceeded you must	If the threshold level for that hazardous chemical is exceeded then you must
(1) That is an EHS	Determine the total quantity of the EHS present throughout your facility at any one time, by adding together the quantity present as a component in all mixtures and all other quantities of the EHS (you must include the quantity present in a mixture even if you are also counting the quantity of that particular mixture toward the threshold level for that mixture).	Report the EHS component—submit an MSDS for the EHS (or include the EHS on the list of chemicals submitted in lieu of the MSDSs), as provided under § 370.30, and submit Tier I (or Tier II) information for the EHS, as provided under § 370.40 or report the mixture itself—submit an MSDS for the mixture (or include the mixture on the list of chemicals submitted in lieu of the MSDSs), as provided under § 370.30, and submit Tier I (or Tier II) information for the mixture, as provided under § 370.40. If you report the mixture itself, then provide the total quantity of that mixture.
(2) That is not an EHS	Determine either: The total quantity of the hazardous chemical present throughout your facility at any one time by adding together the quantity present as a component in all mixtures and all other quantities of the hazardous chemical (you must include the quantity present in a mixture even if you are also applying that particular mixture as a whole toward the threshold level for that mixture) or the total quantity of that mixture present throughout your facility at any one time.	Report the non-EHS hazardous chemical component—submit an MSDS for the non-EHS hazardous chemical (or include the non-EHS on the list of chemicals submitted in lieu of the MSDSs), as provided under § 370.30, and submit Tier I (or Tier II) information for the non-EHS hazardous chemical as provided under § 370.40 or report the mixture itself—submit an MSDS for the mixture (or include the mixture on the list of chemicals submitted in lieu of MSDSs), as provided under § 370.30, and submit Tier I (or Tier II) information for the mixture, as provided under § 370.40. If you report the mixture itself, then provide the total quantity of that mixture.

(b) For each specific mixture, the reporting option used must be consistent for both MSDS and inventory reporting, unless it is not possible to do so. This means that if you report on a specific mixture as a whole for MSDS reporting, you must report on that mixture as a whole for inventory reporting too (unless it is not possible). MSDS reporting and inventory reporting are discussed in detail in subpart C of this part.

(c) To determine the quantity of an EHS or a non-EHS hazardous chemical component present in a mixture, multiply the concentration of the hazardous chemical component (in weight percent) by the weight of the mixture (in pounds). You do not have to count a hazardous chemical present in a mixture if the concentration is less than or equal to 1%, or less than or equal to 0.1% for a carcinogenic chemical.

Subpart C—Reporting Requirements

§ 370.20 What are the reporting requirements of this part?

The reporting requirements of this part consist of MSDS reporting and inventory reporting. If you are the owner or operator of a facility subject to the reporting requirements of this part then you must comply with both types of reporting requirements. MSDS reporting requirements are addressed in §§ 370.30 through 370.33. Inventory reporting requirements are addressed in §§ 370.40 through 370.45.

How to Comply With MSDS Reporting

§ 370.30 What information must I provide and what format must I use?

(a) You must report the hazardous chemicals present at your facility that meet or exceed the applicable threshold levels (threshold levels are in §1A370.10) by either:

(1) Submitting an MSDS for each hazardous chemical present at your facility that meet or exceed its applicable threshold level; or

(2) Submitting a list of all hazardous chemicals present at your facility at or above the applicable threshold levels. The hazardous chemicals on your list must be grouped by Hazard Category as defined under § 370.66. The list must contain the chemical or common name of each hazardous chemical as provided on the MSDS.

(b) Within 30 days of a request by the LEPC (as provided in § 370.10(b)), you must also submit an MSDS for any hazardous chemical present at your facility for which you have not submitted an MSDS.

§ 370.31 Do I have to update the information?

MSDS reporting stated in § 370.30 is a one-time requirement. However, you must update the information in all of the following ways:

(a) Submit a revised MSDS after you discover significant new information concerning a hazardous chemical for which an MSDS was submitted.

(b) Submit an MSDS, or a list as described in § 370.30(a), for any new hazardous chemical for which you become subject to these reporting requirements.

(c) Submit, as requested by the LEPC, an MSDS for any hazardous chemical present at your facility which you have not already submitted, as provided in § 370.30(b).

§ 370.32 To whom must I submit the information?

(a) You must submit an MSDS or list, as provided in § 370.30(a), to the LEPC, the SERC, and the fire department with jurisdiction over your facility.

(b) You must submit an MSDS requested by the LEPC, as provided in § 370.30(b), to the LEPC.

§ 370.33 When must I submit the information?

(a) You must submit an MSDS or a list, as provided in § 370.30(a), for a hazardous chemical subject to the reporting requirements of this part by October 17, 1987, or within 3 months after you first become subject to the reporting requirements of this part (as provided in §§ 370.30 and 370.31(b)).

(b) You must submit a revised MSDS, as provided in § 370.31(a), within 3 months after discovering significant new information about a hazardous chemical for which an MSDS was submitted.

(c) You must submit an MSDS requested by the LEPC, as provided in §§ 370.30(b) and 370.31(c), within 30 days of receiving the request.

How to Comply With Inventory Reporting

§ 370.40 What information must I provide and what format must I use?

(a) If you are required to comply with the hazardous chemical reporting requirements of this part, then by March 1 every year you must submit inventory information regarding any hazardous chemical present at your facility at any time during the previous calendar year in an amount equal to or in excess of its threshold level. Threshold levels are provided in § 370.10.

(b) Tier I information is the minimum information that you must report to be in compliance with the inventory reporting requirements of this part as described in § 370.41. You may choose to report the Tier II information described in § 370.42 for any hazardous chemical at your facility. You must submit Tier II information to the SERC, LEPC, or fire department having jurisdiction over your facility if they request it. EPA publishes Tier I and Tier II Inventory Forms that provide uniform formats for reporting the Tier I and Tier II information. You may use a State or local format for reporting inventory information if the State or local format contains at least the Tier I information described in § 370.41. EPA's Tier I and Tier II forms are available at *http://www.epa.gov/emergencies.*

Note to paragraph (b):

Some States require Tier II information annually under State law.

(c) You should contact the SERC to determine that State's requirements for inventory reporting formats, procedures, and to obtain inventory forms.

§ 370.41 What is Tier I inventory information?

Tier I information provides State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the previous calendar year. The Tier I information is the minimum information that you must provide to be in compliance with the inventory reporting requirements of this part. If you are reporting Tier I information, you must report aggregate information on hazardous chemicals by hazard categories. There are two health hazard categories and three physical hazard categories for purposes of reporting under this part. These five hazard categories are defined in 40 CFR 370.66. Tier I information includes all of the following:

(a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier I submission is true, accurate, and complete as follows: ''I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.'' This certification shall be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

(b) The calendar year for the reporting period.

(c) The complete name (and company identifier where appropriate) and address of your facility. Include the full street address or state road, the city, county, State and zip code.

(d) The North American Industry Classification System (NAICS) code for your facility.

(e) The Dun & Bradstreet number of your facility.

(f) The owner's or operator's full name, mailing address, and phone number.

(g) Emergency contact. The name, title, and phone number(s) of at least one local individual or office that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must provide an emergency phone number where such emergency information will be available 24 hours a day, every day.

(h) An indication whether the information being reported is identical to that submitted the previous year.

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each hazard category present at your facility at any time during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(j) An estimate (in ranges) of the average daily amount of hazardous chemicals in each hazard category present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(k) The maximum number of days that any single hazardous chemical within each hazard category was present at your facility during the reporting period.

(l) The general location of hazardous chemicals in each hazard category within your facility. For each hazard type, list the locations of all applicable chemicals. As an alternative, you may choose to submit a site plan and list the site coordinates to indicate the locations of the chemicals.

§ 370.42 What is Tier II inventory information?

Tier II information provides State and local officials and the public with specific information on amounts and locations of hazardous chemicals present at your facility during the previous calendar year. If you are reporting Tier II information, you must include:

(a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier II submission is true, accurate, and complete as follows: ''I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.'' This certification must be accompanied by your full name, official title, original signature, date signed, and total number of pages in the submission including all Confidential and Non-Confidential Information Sheets and all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

(b) The calendar year for the reporting period.

(c) The complete name (and company identifier where appropriate) and address of your facility. Include the full street address or state road, the city, county, State and zip code.

(d) The North American Industry Classification System (NAICS) code for your facility.

(e) The Dun & Bradstreet number of your facility.

(f) The owner's or operator's full name, mailing address, and phone number.

(g) Emergency contact. The name, title, and phone number(s) of at least one local individual or office that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must provide an emergency phone number where such emergency information will be available 24 hours a day, every day.

(h) An indication whether the information being reported is identical to that submitted the previous year.

(i) For each hazardous chemical that you are required to report, you must:

(1) Provide the chemical name or the common name of the chemical as provided on the Material Safety Data Sheet and its Chemical Abstract Service (CAS) registry number. If you are withholding the name in accordance with trade secret criteria, you must provide the generic class or category that is structurally descriptive of the chemical and indicate that the name is withheld because of trade secrecy. Trade secret criteria are addressed in § 370.64(a).

(2) Indicate whether the chemical is: pure or mixture; solid, liquid, or gas; and whether the chemical is or contains an EHS.

(3) If the chemical is a mixture containing an EHS, provide the chemical name of each EHS in the mixture.

(4) Indicate which hazard categories apply to the chemical. The five hazard categories are defined in § 370.66.

(5) Provide an estimate (in ranges) of the maximum amount of the hazardous chemical present at your facility on any single day during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(6) Provide an estimate (in ranges) of the average daily amount of the hazardous chemical present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(7) The maximum number of days that the hazardous chemical was present at your facility during the preceding calendar year.

(8) Provide a brief description of the precise location of the hazardous chemical at your facility. Alternatively, you may attach a site plan that notes locations, coordinates or a list of site coordinate abbreviations where hazardous chemicals are located.

Under EPCRA section 324, you may choose to withhold from disclosure to the public the location information for a specific chemical. If you choose to withhold the location information from disclosure to the public, you must clearly indicate that the information is ''confidential.'' You must provide the confidential location information on a separate sheet from the other Tier II information (which will be disclosed to the public), and attach the Confidential Location Information Sheet to the other Tier II information. Indicate any attachments you are including.

(9) A brief description of the manner of storage of the hazardous chemical, including container type, temperature and pressure, a description of dikes and other safeguard measures for each location listed. You must use codes that correspond to different storage types and temperature and pressure conditions. The storage codes are in § 370.43. If the specific location for which you are reporting storage conditions is a ''confidential'' location, then you must report the storage conditions on a separate Confidential Location Information Sheet.

§ 370.43 What codes are used to report Tier I and Tier II inventory information?

(a) *Weight range codes.* Except as provided in paragraph (d) of this section, you must use the following codes to report the maximum amount and average daily amount when reporting Tier I or Tier II information:

Range codes	Weight range in pounds	
	From	To
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	More than 1 billion.

Note to paragraph (a): To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

(b) *Storage type codes.* Except as provided in paragraph (d) of this section, you must use the following codes to report storage types when you are reporting Tier II information:

Codes	Types of storage
A	Above ground tank.
B	Below ground tank.
C	Tank inside building.
D	Steel drum.
E	Plastic or non-metallic drum.
F	Can.
G	Carboy.
H	Silo.
I	Fiber drum.
J	Bag.
K	Box.
L	Cylinder.
M	Glass bottles or jugs.
N	Plastic bottles or jugs.
O	Tote bin.
P	Tank wagon.
Q	Rail car.
R	Other.

(c) *Storage condition codes.* Except as provided in paragraph (d) of this section, you must use the following codes to report storage conditions when you are reporting Tier II information:

Codes	Storage conditions
Pressure conditions	
1	Ambient pressure.
2	Greater than ambient pressure.
3.	Less than ambient pressure.
Temperature conditions	
4	Ambient temperature.
5	Greater than ambient temperature.
6	Less than ambient temperature but not cryogenic.
7	Cryogenic conditions.

(d) Your SERC or LEPC may provide other range codes for reporting maximum amounts and average daily amounts, or may require reporting of specific amounts. You may use your SERC's or LEPC's range codes (or specific amounts) provided the ranges are not broader than the ranges in paragraph (a) of this section. Your SERC or LEPC may also provide other codes

for storage types or conditions. You may use those codes provided your SERC's or LEPC's storage types and conditions codes specify the same or more detailed information as the codes in paragraphs (b) and (c) of this section.

§ 370.44 To whom must I submit the inventory information?

You must submit the required inventory information to your SERC, LEPC, and fire department with jurisdiction over your facility.

§ 370.45 When must I submit the inventory information?

(a) You must submit the required inventory information on or before March 1 (beginning in 1988 or beginning after your facility first becomes subject to this part), and on or before by March 1 of each year afterwards. Your submission must contain the required inventory information on hazardous chemicals present at your facility during the preceding calendar year at or above the threshold levels. Threshold levels are in § 370.10. The minimum required inventory information under EPCRA section 312 is Tier I information. Tier I information requirements are described in § 370.41.

(b) You must submit Tier II information within 30 days of the receipt of a request from the SERC, LEPC, or the fire department having jurisdiction over your facility, as provided in § 370.10(b). Tier II information requirements are described in § 370.42.

Subpart D—Community Access to Information

§ 370.60 How does a person obtain MSDS information about a specific facility?

Any person may obtain an MSDS for a specific facility by writing to the LEPC and asking for it.

(a) If the LEPC has the MSDS, it must provide it to the person making the request.

(b) If the LEPC does not have the MSDS, it must request the MSDS from the facility's owner or operator.

§ 370.61 How does a person obtain inventory information about a specific facility?

(a) Any person may request Tier II information for a specific facility by writing to the SERC or the LEPC and asking for such information.

(1) If the SERC or LEPC has the Tier II information, the SERC or LEPC must provide it to the person making the request.

(2) If the SERC or LEPC does not have the Tier II information, it must request it from the facility owner or operator in either of the following cases:

(i) The person making the request is a State or local official acting in his or her official capacity.

(ii) The request is for hazardous chemicals in amounts greater than 10,000 pounds stored at the facility at any time during the previous calendar year.

(3) If the SERC or LEPC does not have the Tier II information, it may request it from the facility owner or operator when neither condition in paragraph (a)(2) of this section is met, but the person's request includes a general statement of need.

(b) A SERC or LEPC must respond to a request for Tier II information under this section within 45 days of receiving such a request.

§ 370.62 What information may a State or local official request from a facility?

The LEPC may ask a facility owner or operator to submit an MSDS for a hazardous chemical present at the facility. The SERC, LEPC, or fire department having jurisdiction over a facility may ask a facility owner or operator to submit Tier II information. The owner or operator must provide the MSDS (unless the owner or operator has already submitted an MSDS to the LEPC for that hazardous chemical) or Tier II information within 30 days of receipt of such request.

§ 370.63 What responsibilities do the SERC and the LEPC have to make request information available?

Under this subpart, the SERC or LEPC must make the following information (except for confidential location information discussed in § 370.64(b)) available if a person requests it:

(a) All information obtained from an owner or operator in response to a request under this subpart.

(b) Any requested Tier II information or MSDS otherwise in possession of the SERC or the LEPC.

§ 370.64 What information can I claim as trade secret or confidential?

(a) *Trade secrets.* You may be able to withhold the name of a specific chemical when submitting MSDS reporting or inventory reporting information if that chemical name is claimed as a trade secret. The requirements for withholding trade secret information are set forth in EPCRA section 322 and implemented in 40 CFR part 350. If you are withholding the name of a specific chemical as a trade secret in accordance with trade secrecy requirements, you must report the generic class or category that is structurally descriptive of the chemical along with all other required information. You must also submit the withheld information to EPA and must adequately substantiate your claim. A Form for substantiating trade secret claims is available at the Agency Web site at *http://www.epa.gov/emergencies.*

(b) *Confidential location information.* You may request that the SERC or the LEPC not disclose to the public the location of any specific chemical required to be submitted in Tier II information. If you make such a request, the SERC or LEPC must not disclose the location of the specific chemical. If you use the Tier II Form to report your inventory information, you can choose to report confidential location information for a specific chemical on the Confidential Location Information Sheet, which must be attached to the other Tier II information you are reporting. Although you may request that location information with respect to a specific chemical be withheld from the public, you may not withhold this information from the SERC, the LEPC, or the local fire department. The Confidential Location Information Sheet is available on the Agency Web site at *http://www.epa.gov/emergencies.*

§ 370.65 Must I allow the local fire department to inspect my facility and must I provide specific location information about hazardous chemicals at my facility?

If you are the owner or operator of a facility that has submitted inventory information under this part, you must comply with the following two requirements upon request by the fire department with jurisdiction over your facility:

(a) You must allow the fire department to conduct an on-site inspection of your facility; and

(b) You must provide the fire department with information about the specific locations of hazardous chemicals at your facility.

§ 370.66 How are key words in this part defined?

Chief Executive Officer of the Tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

Environment includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

EPCRA means the Emergency Planning and Community Right-To-Know Act of 1986.

Extremely hazardous substance (EHS) means a substance listed in Appendices A and B of 40 CFR part 355.

Facility means all buildings, equipment, structures, and other

stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person).

Facility includes manmade structures, as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.

Hazard category means any of the following:

(1) Immediate (acute) health hazard, including highly toxic, toxic, irritant, sensitizer, corrosive, (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of short-term exposure and is of short duration;

(2) Delayed (chronic) health hazard, including carcinogens (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long-term exposure and is of long duration;

(3) Fire hazard, including flammable, combustible liquid, pyrophoric, and oxidizer (as defined under 29 CFR 1910.1200);

(4) Sudden release of pressure, including explosive and compressed gas (as defined under 29 CFR 1910.1200); and

(5) Reactive, including unstable reactive, organic peroxide, and water reactive (as defined under 29 CFR 1910.1200).

Hazardous chemical means any hazardous chemical as defined under 29 CFR 1910.1200(c), except that such term does not include:

(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 to the extent it is used:

(i) 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;

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

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

Indian Country means Indian country as defined in 18 U.S.C. 1151 as:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or Tribe means those Tribes federally recognized by the Secretary of the Interior.

Inventory form means the uniform Tier I and Tier II emergency and hazardous chemical inventory forms published by EPA. These forms can be used for reporting inventory information, as described in 40 CFR 370.40 through 370.45.

LEPC means the Local Emergency Planning Committee appointed by the State Emergency Response Commission.

Material Safety Data Sheet or MSDS means the sheet required to be developed under 29 CFR 1910.1200(g).

Mixture means mixture as defined under the Occupational Safety and Health Administration's Hazard Communication Standard in 29 CFR 1910.1200(c).

OSHA means the U.S. Occupational Safety and Health Administration.

Person means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

SERC means the State Emergency Response Commission for the State in which the facility is located except when the facility is located in Indian Country, in which case, SERC means the Emergency Response Commission for the Tribe under whose jurisdiction the facility is located. In the absence of a SERC for a State or an Indian Tribe, the Governor or the chief executive officer of the tribe, respectively, shall be the SERC. Where there is a cooperative agreement between a State and a Tribe, the SERC shall be the entity identified in the agreement.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdiction and Indian Country.

Threshold planning quantity (TPQ) means, for a substance listed in Appendices A and B of 40 CFR part 355, the quantity listed in the column ''threshold planning quantity'' for that substance.

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