

Guide to the Emergency Planning and Community Right-to-Know Act

On December 4, 1984, methyl isocyanate—an extremely toxic chemical—escaped from a Union Carbide chemical plant in Bhopal, India. Thousands of people died that night in what is widely considered to be the worst industrial disaster in history. Thousands more died later as a result of their exposure, and survivors continue to suffer with permanent disabilities. Six months later, a serious chemical release occurred at a similar facility in Institute, West Virginia; six people were hospitalized.

These two events raised concern about local preparedness for chemical emergencies and the availability of information on hazardous chemicals, and underscored growing demands by citizens, public interest groups and environmental organizations for information on the toxic chemicals routinely used and released by facilities in their communities.

In response, Congress passed the **Emergency Planning and Community Right-to-Know Act (EPCRA)** on **October 17, 1986**. EPCRA established requirements for federal, state and local governments; Indian tribes; and industrial facilities regarding emergency planning and “community right-to-know” reporting on hazardous and toxic chemicals. On October 23, 2018, the passage of America’s Water Infrastructure Act (AWIA) created additional responsibilities for state, tribal and local governments.

EPCRA’s emergency planning provisions help communities prepare for potential chemical accidents. EPCRA’s right-to-know provisions help increase public knowledge of and access to information on the presence, use, and release of chemicals at individual facilities. States, tribes and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

What are SERCs, TERCs, TEPCs and LEPCs?¹



State Emergency Response Commissions (SERCs)
 Shortly after EPCRA was passed, the Governor of each state created a State Emergency Response Commission (SERC). The SERCs are responsible for designating local emergency planning districts and appointing Local Emergency Planning Committees (LEPCs) for each district. Each SERC supervises and coordinates the activities of their respective LEPCs, establishes procedures for receiving and processing public requests for information collected under EPCRA, and reviews local emergency response plans.

Tribal Emergency Response Commissions (TERCs)
 The Chief Executive Office of the Tribe appoints the Tribal Emergency Response Commissions (TERCs). TERCs have the same responsibilities as SERCs. Tribal Emergency Planning Committees (TEPCs), established by the TERCs, have the same responsibilities as LEPCs.

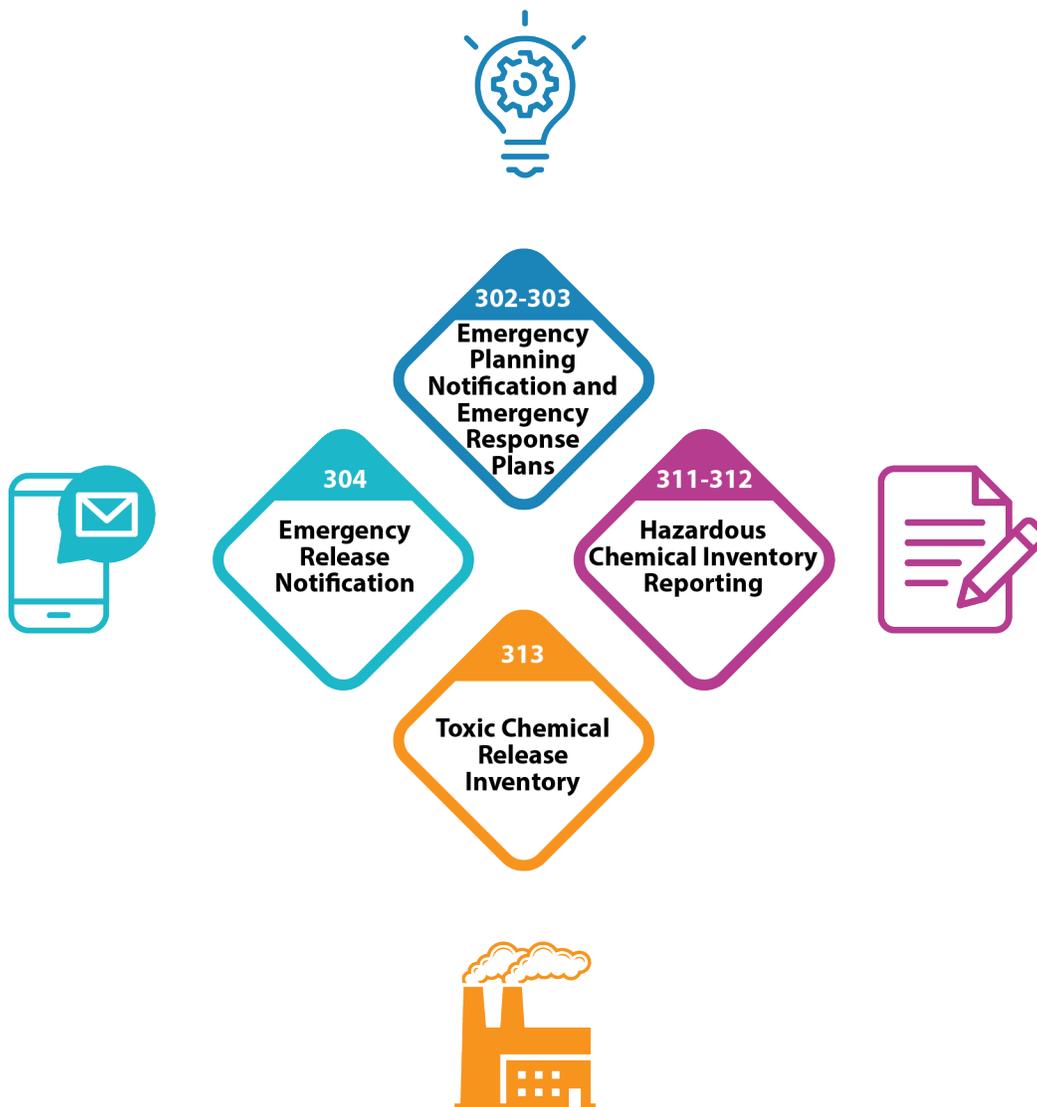
Local Emergency Planning Committees (LEPCs) and Tribal Emergency Planning Committees (TEPCs)
 Nationwide, there are 3500 LEPCs. LEPC and TEPC members must include, at a minimum, local officials (including police, fire, civil defense, public health, transportation, and environmental professionals), as well as representatives of facilities subject to the emergency planning requirements, community groups, and the media. Each LEPC and TEPC must develop an emergency response plan, review them at least annually, and provide the public with information about chemicals present in the community.

¹ SERCs, TERCs, TEPCs and LEPCs were established under EPCRA section 301.

What EPCRA Covers

EPCRA has four major provisions:

- Emergency Planning Notification and Emergency Response Plans (Sections 302-303)
- Emergency Release Notification (Section 304)
- Hazardous Chemical Inventory Reporting (Sections 311-312)
- Toxic Chemical Release Inventory (referred to as the “Toxics Release Inventory”) (Section 313)



Information collected under these sections helps states, tribes, and communities understand existing chemical hazards in communities, as well as at individual facilities.

Regulations implementing EPCRA are codified in Title 40 of the Code of Federal Regulations, parts 350 to 372.

Emergency Planning Notification and Emergency Response Plans (Sections 302-303)

As required by Section 302, within 30 days after the enactment, EPA published the list of Extremely Hazardous Substances (EHSs) and their Threshold Planning Quantities (TPQs) in an interim final rule. In April 1987, the list of EHSs and their TPQs was finalized. Within seven months of the enactment, facilities were required to notify the SERC (or TERC) and LEPC (or TEPC) if any EHS at or above its TPQ was present on site or within 60 days of first shipment or production of the substance on site.

EPCRA Section 303(d) requires facilities to notify the LEPC (or TEPC) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator. Additionally, facilities are required to promptly provide any information necessary to develop and modify the emergency plan, upon request by the LEPC (or TEPC).

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

- Identify facilities with EHSs on site at or above the TPQs, routes likely to be used to transport EHSs, and additional facilities contributing or subjected to additional risk due to their proximity to facilities with EHSs on site, such as hospitals or natural gas facilities;
- Describe procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any chemical release;
- Designate a community emergency coordinator and facility emergency coordinator(s) to implement the plan;
- Outline emergency notification procedures;
- Describe how to determine the area and population likely affected by the chemical releases;
- Describe local emergency equipment and the facilities and persons responsible for them;
- Outline evacuation plans;
- Provide a training program for emergency responders; and,
- Provide methods and schedules for exercising emergency response plans.

Emergency response plans were initially focused on, but were not limited to, the 406 extremely hazardous substances (EHSs) listed by EPA in 1987. The list has been revised several times since, and, as of October 2020, includes 355 chemicals.



Emergency
Planning Notification
and Emergency Response
Plans
(302-303)

Emergency Release Notification (Section 304)

Section 304 of EPCRA requires facilities to immediately notify the SERC (or TERC) and LEPC (or TEPC) if there is a release into the environment of a hazardous substance that is equal to or exceeds the minimum reportable quantity established in the regulations. This requirement is in addition to the release notification requirements under Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

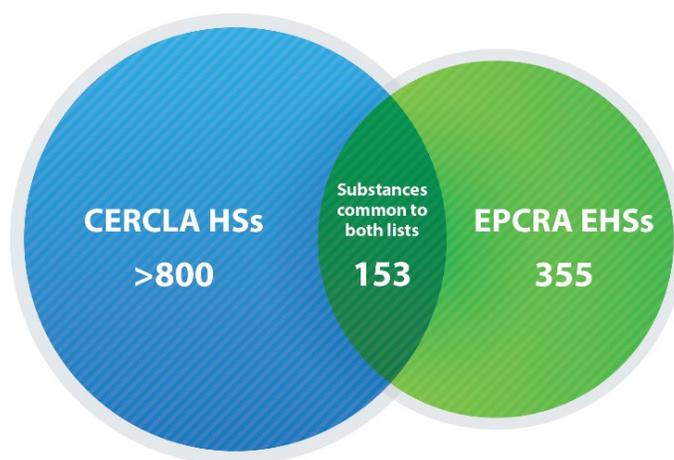


Emergency release notification requirements under EPCRA section 304 cover 355 EPCRA EHSs and more than 800 hazardous substances (HSs) (“CERCLA HSs”) listed under CERCLA. (The lists of EPCRA EHSs and CERCLA HSs are codified in 40 CFR parts 355 and 302, respectively). Some chemicals are common to both lists. Initial notification can be made by telephone (most states have hotlines), radio, or in person. Under EPCRA Section 304, notification of releases occurring during transportation can be made by dialing 911, or in the absence of a 911 emergency number, calling the operator.

As stated in EPCRA section 304(b), the initial release notification should include:

- The chemical name;
- An indication of whether it is an extremely hazardous substance;
- An estimate of the quantity released into the environment;
- The time and duration of the release;
- Whether the release occurred into air, water, and/or land;
- Any known or anticipated acute or chronic health risks associated with the emergency, and where necessary, advice regarding medical attention for exposed individuals;
- Proper precautions, such as evacuation or sheltering in place; and
- Name and telephone number of contact person.

Comparison of CERCLA HSs and EPCRA EHSs



As required by EPCRA Section 304(c), a follow-up written report must be submitted to the SERC (or TERC) and LEPC (or TEPC) as soon as practicable² after the release. The follow-up report must update information included in the initial notice and provide information on actual response actions taken and advice regarding medical attention necessary for citizens exposed.

² Many states require the written report to be submitted within 30 days.

Emergency Release Notification (Section 304)

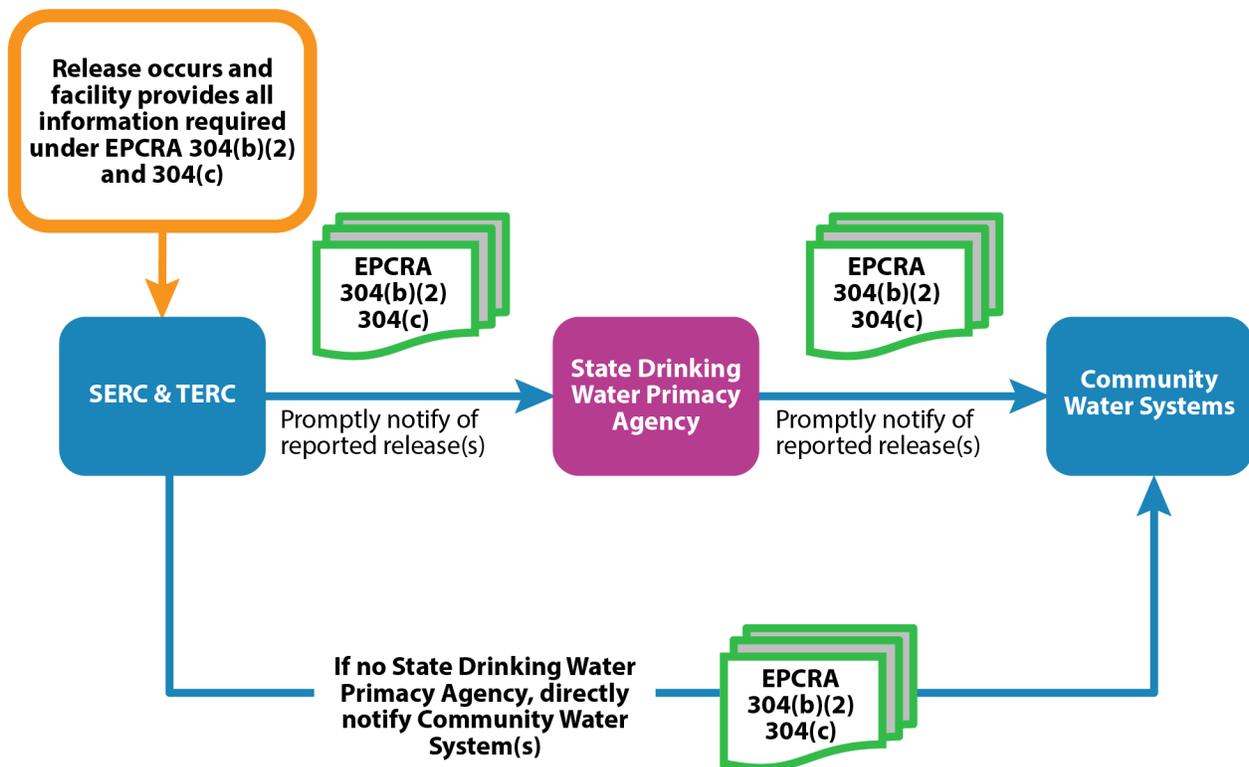
Amendments to EPCRA Section 304

In addition to the facility notification requirements described above, Section 2018 of the America's Water Infrastructure Act (AWIA), enacted on October 23, 2018, amended EPCRA Section 304 to require SERCs and TERCs to promptly notify the state drinking water primacy agency (i.e., applicable state agency) of any reportable release and provide this agency with:

- The information collected under section 304(b) from the initial release notification; and
- The follow-up written report received under section 304(c).

The state drinking water primacy agency is then required to promptly provide all the information regarding the release to any community water systems whose source water is affected by the release. A community water system's source water is potentially affected if the release occurs in that system's source water area (also known as a source water protection area) or upstream of the system's water intake. Drinking water primacy agencies and community water systems can provide the boundaries for source water protection areas to the SERCs and TERCs. For states with no state drinking water primacy agency, the SERC and TERC are required to directly notify the potentially affected community water systems.

AWIA Section 2018(a) Release Notification Flow

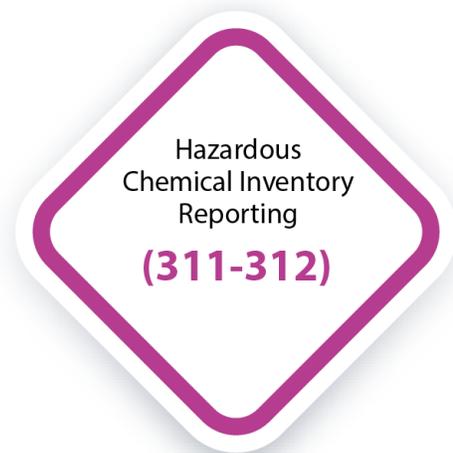


Hazardous Chemical Inventory Reporting

(Sections 311 and 312)

Under Occupational Safety and Health Administration (OSHA) regulations, employers must maintain a material safety data sheet (MSDS) (Safety Data Sheet, SDS) for any hazardous chemicals stored or used in the workplace. Approximately 800,000 products are required to have MSDSs (SDSs).

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



Physical Hazards

- Flammable (gases, aerosols, liquids, or solids)
- Gas under pressure
- Explosive
- Self-heating
- Pyrophoric (liquid or solid)
- Oxidizer (liquid, solid, or gas)
- Organic peroxide
- Self-reactive
- In contact with water emits flammable gas
- Corrosive to metal
- Hazard Not Otherwise Classified (HNOC)

Health Hazards

- Carcinogenicity
- Acute toxicity (any route of exposure)
- Reproductive toxicity
- Skin Corrosion or Irritation
- Respiratory or Skin Sensitization
- Serious eye damage or eye irritation
- Specific target organ toxicity (single or repeated exposure)
- Germ cell mutagenicity
- Aspiration Hazard
- Hazard Not Otherwise Classified (HNOC)

If requested by an LEPC or TEPC, a facility owner or operator must submit a copy of the MSDS (SDS) for any chemical on the list.

Facilities that start using a new hazardous chemical or increase the quantity of a hazardous chemical that exceed the thresholds must submit MSDSs (SDSs) or a list of these chemicals within three months of triggering reporting. Facilities must also provide a revised MSDS (SDS) or list if significant new information is discovered about the hazardous chemical.

Facilities covered by Section 311 must annually submit an Emergency and Hazardous Chemical Inventory Form to the SERC (or TERC), LEPC (or TEPC) and the local fire department as required under Section 312. Facilities provide either a Tier I or Tier II inventory form.

Hazardous Chemical Inventory Reporting (Sections 311 and 312)

The **Tier I inventory form** includes the following aggregate information for each applicable hazard category:

- An estimate (in ranges) of the maximum amount of hazardous chemicals for each category present at the facility at any time during the preceding calendar year;
- An estimate (in ranges) of the average daily amount of hazardous chemicals in each category; and
- The general location of hazardous chemicals in each category.

The **Tier II inventory form** contains basically the same information as the Tier I form, but it must list the specific chemicals. The Tier II inventory form provides the following information for each chemical:

- The chemical name or the common name as indicated on the MSDS;
- An estimate (in ranges) of the maximum amount of the chemical present at any time during the preceding calendar year and the average daily amount;
- A brief description of the manner of storage of the chemical;
- The location of the chemical at the facility; and
- An indication of whether the owner elects to withhold location information from disclosure to the public.

Many states now require facilities to submit Tier II information using Tier2 Submit³ software or the state equivalent including electronic reporting under state law. Tier II information must be submitted on or before March 1 of each year for chemicals present at the facility during the previous year.

Amendments to EPCRA Section 312

Section 2018 of the America's Water Infrastructure Act (AWIA) also amended EPCRA Section 312, requiring SERCs, TERCs, LEPCs, and TEPCs to provide affected community water systems with Tier II information for facilities within their source water area upon request. Source water areas may span multiple jurisdictional boundaries at the state, tribal, and local levels, potentially requiring access to Tier II information from multiple SERCs, TERCs, LEPCs, or TEPCs. If a facility has not complied with Tier II reporting requirements, then the SERC (or TERC) and LEPC (or TEPC) should request that the facility submit its Tier II form and then provide Tier II information to the affected community water systems.

³ Tier2 Submit is an electronic reporting software developed by EPA and NOAA.

Toxics Release Inventory (Sections 313)

The Toxics Release Inventory (TRI) is a publicly available database that contains information on the quantities of certain toxic chemicals released annually to air, water and land, or otherwise managed as waste by facilities throughout the United States.

Facilities in covered industry sectors must report how much of each chemical they manage through recycling, energy recovery, treatment and environmental releases. TRI reporting forms must be submitted to EPA and the appropriate state or tribe by July 1 of each year; these forms contain waste management data for the previous calendar year.

The information submitted by facilities is compiled in the Toxics Release Inventory and made available to the public through online tools, written analyses, and interactive charts and maps at www.epa.gov/tri. This information is always available and free, and supports informed decision-making by communities, government agencies, companies, and others.

TRI includes information about:

- Management (including environmental releases) of lead, mercury, dioxin and other chemicals of concern;
- On-site releases (including disposal) of TRI-covered chemicals to air, surface waters and land;
- On-site recycling, energy recovery, and treatment associated with TRI-covered chemicals;
- Off-site transfers of chemicals from TRI facilities to other locations; and
- Pollution prevention activities at facilities.

TRI reporting is required for facilities that:

- Are in a TRI-covered industry sector;
- Employ the equivalent of 10 or more full-time staff; AND
- Manufacture, process, or otherwise use a TRI-covered chemical in quantities above the established reporting threshold (see page 9).

Some of the ways TRI data can be used include:

- Identifying sources of toxic chemical releases;
- Providing a basis for community discussions, educational activities, and public health research;
- Helping companies learn from each other's best practices to reduce pollution; and
- Combining TRI with health data and other information to better understand potential environmental and human health hazards.



Chemicals and Reporting Thresholds

| Section | Chemicals Covered | Thresholds |
|--|---|--|
|  <p>Emergency Planning Notification and Emergency Response Plans (302-303)</p> | Extremely Hazardous Substances (EHSs) (40 CFR part 355, Appendix A and B) | Threshold Planning Quantity: Ranges from 1 to 10,000 pounds on site at any one time |
|  <p>Emergency Release Notification (304)</p> | EHSs (40 CFR part 355, Appendix A and B) and CERCLA HSs (40 CFR 302.4) | Reportable Quantity: Ranges from 1 to 5,000 pounds, released in any 24-hour period |
|  <p>Hazardous Chemical Inventory Reporting (311-312)</p> | Approximately 800,000 products | Thresholds: 500 pounds or TPQ whichever is less for EHSs; gasoline greater than or equal to 75,000 gallons (all grades combined)*; diesel greater than or equal to 100,000 gallons (all grades combined)*; 10,000 pounds for all other hazardous chemicals |
|  <p>Toxic Chemical Release Inventory (313)</p> | 767 toxic chemicals and 33 chemical categories (40 CFR 372.65) | Thresholds: 25,000 pounds manufactured or processed in a year; 10,000 pounds otherwise used in a year; chemicals of special concern have lower thresholds |

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

Other EPCRA Provisions*

Trade Secrets

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

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

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

EPCRA Penalties

EPCRA Section 325 allows for civil and administrative penalties ranging from up to \$23,331 - \$174,985⁴ per violation per day when facilities fail to comply with the reporting requirements. Criminal penalties up to \$50,000 or five years in prison apply to any person who knowingly and willfully fails to provide emergency release notification. Penalties of not more than \$20,000 and/or up to one year in prison apply to any person who knowingly and willfully discloses any information entitled to protection as a trade secret.

Citizens Suits

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

⁴ The penalty amounts described have been adjusted by the 2020 Civil Monetary Penalty Inflation Adjustment Rule, mandated by the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461 note, Pub. L. 114-74 (see <https://www.congress.gov/114/plaws/publ74/PLAW-114publ74.pdf>). See also 85 Fed. Reg. 1751 (Jan. 13, 2020).

* Not all these provisions are requirements.

Reporting Schedules

| Section | Schedule |
|--|---|
|  <p>Emergency Planning Notification and Emergency Response Plans (302-303)</p> | 302 & 303 <p>A one-time notification to the SERC/TERC and LEPC/TEPC. Thereafter, within 60 days of the facility triggering reporting. If an LEPC or TEPC requests any information for developing or modifying local emergency plans, the owner or operator of the facility must promptly provide the information.</p> |
|  <p>Emergency Release Notification (304)</p> | 304 <p>A notification to the SERC (or TERC), and LEPC (or TEPC) is required each time a release of an EPCRA EHS or a CERCLA Hazardous substance at or above its reportable quantity.</p> |
|  <p>Hazardous Chemical Inventory Reporting (311-312)</p> | 311 <p>One-time submission of MSDS (SDS) or list of hazardous chemicals. An update is required for new chemicals or new information about chemicals already submitted to the SERC (or TERC), LEPC (or TEPC), and the fire department with jurisdiction over the facility.</p> <hr/> 312 <p>Annually, by March 1 to SERC (or TERC), LEPC (or TEPC), and the fire department with jurisdiction over the facility.</p> |
|  <p>Toxic Chemical Release Inventory (313)</p> | 313 <p>Annually, by July 1, to EPA, states and tribes.</p> |

Learn More about EPCRA

How can I learn more about EPCRA?

- Regulations, factsheets, guidance documents, and answers to frequently asked questions related to EPCRA Sections 301 to 312: www.epa.gov/epcra
- EPA's "List of Lists" detailing chemicals covered under EPCRA regulations: www.epa.gov/epcra/consolidated-list-lists-under-epcracerclacaa-ss112r-august-2020-version
- List of SERCs: www.epa.gov/epcra/state-emergency-response-commissions-contacts
- Training for states, tribes, LEPCs, local planners and responders (non-Section 313): www.epa.gov/epcra/epcra-training-states-tribes-lepcs-local-planners-and-responders-non-section-313
- TRI reporting for facilities: www.epa.gov/tri/reporting

How can I access data and information reported under EPCRA?

Information submitted under the authority of EPCRA is available from the following sources:

- **Sections 303 & 304:** Each emergency response plan and follow-up written report of any release are available to the public from the relevant SERC, TERC, LEPC and TEPC, according to the procedures and processes established by these entities.
- **Sections 311 & 312:** The information submitted under Sections 311 and 312 is publicly available on request from the relevant TEPCs or LEPCs, and SERCs or TERCs.
- **Section 313:** The information submitted by facilities is compiled and made available to the public through online tools, interactive charts, graphs and maps at www.epa.gov/tri.

Who can I contact for more information?

Contact the TRI, EPCRA, RMP & Oil Information Center: 1-800-424-9346

Office of Chemical Safety and Pollution Prevention
Office of Land and Emergency Management
Fall 2020

www.epa.gov/epcra
www.epa.gov/tri

Key EPCRA Definitions

Affected Community Water System(s): One or more community water systems (Safe Drinking Water Act (SDWA) section 1401(15)) that receives supplies of drinking water from a source water protection area, delineated under SDWA Section 1453, in which a facility that is required to prepare and submit an inventory form is located.

Community Water Systems: A system that provides water for human consumption through pipes or other constructed conveyances and has at least fifteen service connections or regularly serves at least twenty-five individuals, and which serves the same population year-round (SDWA Section 1401(15)).

Extremely Hazardous Substance (EHS): EHSs are listed in the Code of Federal Regulations at 40 CFR part 355, Appendices A and B.

Facility: A 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).

Hazardous Substance (HS): Hazardous substances defined under CERCLA and their reportable quantities are listed in the Code of Federal Regulations at 40 CFR part 302, Table 302.4.

State Drinking Water Primacy Agency (i.e., applicable state agency): the drinking water primacy agency that has primary responsibility to enforce the requirements of the SDWA in a state. For links to the various drinking water primacy agencies, see www.asdwa.org/links.

Toxic Chemical: In general, for TRI reporting purposes, a toxic chemical is one that causes 1) cancer or other chronic human health effects; 2) significant adverse acute human health effects; and/or 3) significant adverse environmental effects. Chemicals subject to TRI reporting requirements are defined by EPCRA Section 313 and modified through EPA rulemakings. See the complete TRI chemical list at www.epa.gov/tri/chemicals.