

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 355 and 370**

[FR-6103-7]

RIN 2050-AE17

Emergency Planning and Community Right-to-Know Programs; Amendments to Hazardous Chemical Reporting Thresholds, Streamlining Requirements**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing modifications to 40 CFR parts 355 and 370, which are the regulations implementing sections 302, 303, 304, 311 and 312 of the Emergency Planning and Community Right-To-Know Act (EPCRA). These rules cover requirements for emergency planning and release notification, and hazardous chemical community right-to-know reporting under EPCRA. The proposed changes are intended to reduce reporting burdens, while preserving the important public health and safety benefits of the hazardous chemical reporting requirements. EPA is proposing to raise the reporting thresholds for gasoline and diesel fuel in underground tanks at retail gas stations, and to set new reporting thresholds for some additional hazardous chemicals, under sections 311 and 312. EPA is also proposing to make clarifying changes to the mixture requirements under sections 311 and 312. In addition, EPA is publishing draft guidance as part of the preamble of this document to provide States and local governments with more discretion in implementing the federal requirements—this guidance would not be binding and does not involve any regulatory changes, as discussed further in this preamble. EPA believes the elimination of unnecessary reporting will help focus emergency prevention and planning on more significant hazards. EPA is also proposing to rewrite 40 CFR parts 355 and 370 to make them easier to understand and to use. (However, the rewrite is not intended to make any substantive revision to the existing rules; substantive changes are limited to the revisions specifically proposed in this document.) Improving the clarity of regulatory requirements will make the rules easier to understand and improve compliance.

DATES: Comments must be submitted in writing and must be received at the

address specified below on or before September 8, 1998.

ADDRESSES: Please reference Docket Number 300RR-IF1. *By Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603-9232.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND.DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed-up by an original and three copies sent by mail or Federal Express. Don't submit confidential business information through e-mail.

The docket, which is the administrative record for parts 355 and 370, is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. You can make an appointment to review the docket by calling 703/603-9232. You may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, you will be charged an administrative fee of \$25 and a charge of \$0.15 per page for each page after 266. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Meg Victor or John Ferris, Chemical Emergency Preparedness and Prevention Office, MC 5104, U.S. EPA, 401 M Street SW, Washington, DC 20460, 202/260-1379 or 202/260-4043. Also contact the RCRA/UST, Superfund, and EPCRA Hotline (the Hotline) at 800/424-9346 (in the Washington, DC metropolitan area, contact 703/412-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/535-7672 (in the Washington, DC metropolitan area, 703/412-3323). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site, at www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION: The contents of the **SUPPLEMENTARY INFORMATION** section of today's preamble are listed in the following outline:

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I. Who Is Affected by This Rule?

Three general categories of entities are affected by this rule. These three categories are industry, Federal government, and State and local governments. Numerous entities within each general category are regulated by

this rule. Regulated categories and entities include:

Category	Regulated entities
Industry	Retail gasoline service stations, Chemical storage and processing.
Federal Government	Executive Order 12856 requires all Federal agencies to comply with EPCRA.
State and Local Governments	State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) receive the information provided under EPCRA sections 302, 304, 311 and 312. LEPCs receive information provided under EPCRA section 303. Fire departments receive the information provided under EPCRA sections 311 and 312. State/local government facilities handling chemicals may be subject to this regulation.

This table is not intended to be exhaustive, but rather to provide a guide for readers regulated by this action. To determine whether or not your facility is regulated by this action, you should carefully examine the sections in today's proposed rule explaining who must comply with the rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. What Is the Statutory Authority for This Rule?

This proposed rule is issued under the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), which was enacted by Title III of the Superfund Amendments and Reauthorization Act of 1986, (Pub. L. 99-499). EPCRA established a program 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.

III. What Is the Background of This Rulemaking?

In 1986, EPCRA created requirements regarding planning and preparedness for chemical emergencies, and public access to information concerning potential chemical hazards. EPA established implementing regulations at 40 CFR parts 355 and 370. Today EPA is proposing modifications to several of the regulations that implement the emergency planning, emergency release notification, and the hazardous chemical community right-to-know portions of the EPCRA program (this rulemaking does not effect the implementation of EPCRA section 313, 40 CFR part 372, in any way). The proposed revisions are intended to reduce costs to individuals, businesses and other levels of government, while continuing to achieve EPCRA's environmental goals. These changes are

proposed as part of EPA's ongoing efforts to streamline regulatory requirements. In addition, EPA is proposing draft guidance that does not involve regulatory revisions but explores flexible options to meet the existing regulations. EPA also is proposing to rewrite the emergency planning and hazardous chemical community right-to-know portions of the EPCRA regulations in plain English, in order to reduce regulatory burdens and improve compliance. Only the regulatory revisions specifically discussed in part IV below involve substantive changes to the existing rule. The rewrite of the existing regulations in plain English is intended merely to restate the existing regulations in a format that makes them easier to understand.

In 1990, section 112(r) of the amended Clean Air Act (CAA) established requirements regarding the prevention and detection of accidental releases of hazardous chemicals. The Risk Management Program (RMP) established under those requirements, codified at 40 CFR part 68, is an extension of the planning and preparedness programs established under EPCRA. A specific facility may be subject to the RMP requirements under CAA section 112(r) as well as the planning and preparedness programs under EPCRA. EPA has considered the relationship between these programs while developing today's proposed rule.

IV. What Regulatory Changes Is EPA Proposing in This Rule?

EPA seeks public comment on the specific regulatory revisions addressed below. However, EPA is not reconsidering and is not seeking public input on any other aspects of the existing regulations that are not subject to substantive revision.

A. Principal Regulatory Changes

In today's proposed rulemaking, EPA is exploring innovative ways to improve the efficiency of the reporting requirements under sections 311 and 312 of EPCRA, and provide regulatory

relief, while continuing to protect public health and the environment. This action is proposed as part of EPA's ongoing efforts at regulatory reinvention. EPA based the following proposed changes to the regulatory requirements on input from various stakeholders including States and local emergency planning committees (LEPCs), and on the experience gained through implementing the EPCRA program at the Federal, State and local levels over the past ten years.

The proposed regulatory changes are discussed below:

1. Higher Threshold Levels for Gasoline and Diesel Fuel at Retail Gas Stations When Stored in Tanks Entirely Underground and in Compliance With Underground Storage Tank Regulations

The reporting requirements under sections 311 and 312 of EPCRA are intended to enhance communities' and emergency response officials' awareness of chemical hazards, and to facilitate the development of State and local emergency response plans, thereby aiding communities and emergency response officials in preparing for and responding to emergencies safely and effectively. EPA would like to achieve a sound balance between the amount of information generated for the public under sections 311 and 312, and the value of that information. In an effort to streamline reporting requirements, EPA assessed the usefulness and benefit of the information reported under sections 311 and 312 for various industries. EPA considered the input from stakeholders in making this evaluation.

As described in more detail below, EPA is proposing to establish higher reporting thresholds for gasoline and diesel fuel stored underground at retail gas stations. Both sections 311(b) and 312(b) of EPCRA give EPA general authority to establish threshold quantities for hazardous chemicals below which reporting is not required. Both statutory provisions also state that, in EPA's discretion, the thresholds may be based on classes of chemicals or categories of facilities. Thus, under the

statute, EPA's authority to establish thresholds includes but is not limited to thresholds that are based on classes of chemicals or categories of facilities. Congress broadly empowered EPA to establish thresholds so that EPA could "provide for the development of a manageable program." H.R. Rep. No. 962, 99th Cong., 2d Sess. 1986 (Conf. Rpt.) reprinted in Senate Comm. on Environment and Public Works, 101st Cong., 2d Sess., A Legislative History of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499), vol. 6 at 5104 (hereinafter "Conference Report"). The legislative history also calls for EPA, in establishing thresholds under section 312(b), to "consider the degree to which the hazardous chemical, if released at the facility, would endanger the health of individuals in the community, including emergency response personnel." Conference Report at 5104-5105.

EPA believes that gasoline and diesel fuel, when stored entirely underground at retail gas stations, and in compliance with the Underground Storage Tank (UST) regulations under 40 CFR part 280, present a unique situation for which separate reporting thresholds under EPCRA sections 311 and 312 are warranted. Factors contributing to the uniqueness of this situation, and which EPA considered in establishing the higher reporting thresholds, include the following.

(1) Community Right-to-Know

The public and local emergency officials are generally familiar with the location of retail gas stations, are aware that these facilities have gasoline and diesel fuel, and can typically discern the general storage location of the gasoline and diesel fuel at the facility. In fact, retail gas stations prominently advertise the presence of gasoline and diesel fuel at their facilities, encourage the public to come on site, and often permit the public to dispense the gasoline and diesel fuel themselves. For example, the public can readily determine the location of a retail gasoline station by looking in the telephone books. Because the primary business of retail gasoline stations includes the sale of gasoline and diesel fuel, the public can be certain that a facility stores these substances without the need for reporting under sections 311 and 312 of EPCRA. Thus, the community's right-to-know about the presence of gasoline and diesel fuel at retail gas stations is largely satisfied without routine reporting.

(2) Public Knowledge of Hazards

The public and local emergency officials generally are aware of the hazards associated with gasoline and diesel fuel, so the community's right-to-know about the hazards of those substances is also addressed independent of routine reporting.

(3) Storage Entirely Underground

Retail gas stations typically store gasoline and diesel fuel in tanks that are entirely underground, which generally mitigates the risk of catastrophic release.

(4) Subject to UST Regulations

Underground storage tanks are regulated under the Resource Conservation and Recovery Act (RCRA), so a comprehensive regulatory program is in place that establishes standards for the safe performance and operation of USTs. Additionally, retail gas stations provide notification of their gasoline and diesel fuel under the UST program.

EPA believes that each of these four factors alone wouldn't necessarily warrant separate reporting thresholds, but that in combination these factors present a unique situation for gasoline and diesel fuel in this industry category. Considering these factors together, EPA believes that excluding retail gas stations from the requirement to report material safety data sheets (MSDSs) and annual Tier I information for gasoline and diesel fuel (when held in typical amounts in tanks that are entirely underground, and in compliance with the UST regulations) will promote a more manageable EPCRA program while still protecting the public health and safety of individuals in the community and emergency response officials. EPA acknowledges that gasoline and diesel fuel are flammable and toxic, and that they have the potential to pose a hazard to the community including emergency responders. However, for the reasons stated above, EPA believes that these substances need not be routinely reported under EPCRA when stored in tanks entirely underground in typical amounts and in compliance with the UST regulations, at retail gas stations.

Consequently, in today's rule EPA is proposing to raise the reporting threshold with respect to sections 311 and 312 of EPCRA, for gasoline and diesel fuel when stored entirely underground and in compliance with the UST regulations, at retail gas stations in typical amounts. EPA's intent is to establish new thresholds corresponding to amounts just higher than the typical total amounts of gasoline and diesel fuel held at retail gas stations, so that facilities with typical

capacities would be relieved from reporting. EPA's intent is to set the thresholds at the upper bound of the amounts typically stored at retail gas stations, so that facilities with greater than typical capacities would not be relieved from routine reporting. EPA believes that the public and emergency officials would generally be aware of the quantity stored at typical gas stations, but might not be aware of the amount stored at facilities with above normal inventories.

The reporting thresholds that EPA is proposing are 75,000 gallons for all grades of gasoline combined, and 100,000 gallons for diesel fuel, when held in tanks that are entirely underground and in compliance with the UST regulations, at retail gas stations. EPA based these proposed thresholds on information provided by the Service Station Dealers of America, the Society of Independent Gas Marketers of America, and the Petroleum Equipment Institute. A discussion of the basis for these proposed thresholds is found in a technical memo that you can review at the CERCLA Docket Office, in docket number 300RR-IF1 (for the address of the docket office, see the **ADDRESSES** section in this preamble). For the minority of retail gas stations where gasoline or diesel fuel are not stored entirely underground, the existing reporting threshold of 10,000 pounds would still apply. When gasoline and diesel fuel are not stored entirely underground, the risk of catastrophic release is not mitigated as it generally is when these substances are stored entirely underground. Also, when not stored in underground storage tanks, these substances aren't regulated under the RCRA UST program.

The reporting thresholds that EPA is proposing today are intended to provide relief from reporting gasoline and diesel fuel stored at the great majority of retail gas stations, including truck stops. Retail gas stations with unusually large inventories of gasoline or diesel fuel would still be required to report. EPA is not intending to relieve gasoline and diesel fuel from reporting when stored at facilities other than retail gas stations, or when stored above ground at retail gas stations, or when stored in amounts in excess of an amount typically found at retail gas stations.

Under this proposal, retail gas stations using underground tank systems that do not comply with EPA's UST regulations under 40 CFR part 280 (53 FR 37082) would be subject to the current threshold of 10,000 pounds for gasoline and diesel fuel. Part 280 includes requirements for UST system design,

construction, installation, operation, release detection, release reporting, corrective action and financial responsibility. As of December 23, 1998, part 280 will also require all UST systems to meet certain requirements for corrosion protection and spill and overfill prevention. Gasoline and diesel fuel stored in underground tank systems that are not in compliance with the UST regulations would not be eligible for the higher threshold proposed today, because the Agency believes that they continue to pose a significant risk of release, contamination of soil and ground water, seepage of vapors into underground areas, and even fire and explosions. The Agency believes that the large majority of retail facilities will be subject to the higher thresholds in today's proposed rule, because they meet the current UST system requirements and will meet those in effect as of December 23, 1998.

The proposed thresholds are presented in gallons, instead of pounds like the existing reporting thresholds under current 40 CFR part 370. The existing reporting thresholds apply to solids, liquids and gases, therefore the reporting threshold is in pounds in order to provide a consistent measure for all three phases. However, because gasoline and diesel fuel are liquids, EPA believes that facilities measure their stock of gasoline and diesel fuel in gallons, not in pounds. In addition, the densities of gasoline and diesel fuel vary with temperature, grade, and time of year, so volume is a more reasonable measure for establishing threshold quantities for these substances. EPA requests public comment on setting the proposed thresholds in gallons instead of pounds, and whether this would create confusion because the other thresholds under part 370 are in pounds.

EPA also seeks public comment on its rationale for proposing to raise the reporting thresholds for gasoline and diesel fuel stored entirely underground, and in compliance with the UST regulations, at retail gas stations. Additionally, EPA requests comments on the suitability of the proposed thresholds. As noted, EPA's intent is to establish thresholds corresponding to amounts just higher than the typical total amounts of gasoline and diesel fuel held at retail gas stations. EPA seeks comment on whether this approach is appropriate for this rule, and whether the proposed amounts accurately reflect this approach.

While this proposed regulatory change is intended to generally provide relief from reporting MSDSs under EPCRA section 311 and annual Tier I

inventory information under EPCRA section 312, public access to MSDSs and Tier II inventory information regarding gasoline and diesel fuel of any quantity would be preserved in specific circumstances because the threshold for reporting in response to a request for information (by State or local officials) would remain zero. Section 370.21(d) of the existing rule requires that MSDSs be provided upon request of the LEPC, and section 370.25(c) requires that Tier II information be provided upon request of the SERC, LEPC, or fire department with jurisdiction over a facility. Section 370.20(b)(3) in the existing rule provides that the minimum reporting threshold for reporting in response to a request is zero. In other words, a facility with gasoline or diesel fuel of any quantity would continue to be required to provide this information upon request. However, under EPCRA section 312(e)(3)(C), and section 370.61(a) of today's proposed regulations, if a person submits a request to a SERC or LEPC for Tier II information regarding a hazardous chemical that a facility doesn't store in excess of 10,000 pounds, and the SERC or LEPC does not have the Tier II information in its possession, then the person making the request must indicate the general need for the information; the SERC or LEPC, as the case may be, has discretion in deciding whether to request that information from the facility. In today's proposed rule the zero reporting threshold for reporting in response to requests for an MSDS or Tier II information is retained, and is found in proposed section 370.10(b). In addition, States and local governments always may choose to establish lower thresholds under State or local law.

The terms "gasoline" and "diesel fuel" have been used without definition in today's proposed rulemaking, because EPA believes that the meanings of these terms are understood by the general public. It is EPA's intention to raise the reporting thresholds under sections 311 and 312 of EPCRA for gasoline and diesel fuel, but not for any other hydrocarbon mixtures (e.g., aviation fuel). Comments are requested concerning whether EPA should define gasoline and diesel fuel, in order to clarify that other types of hydrocarbon mixtures aren't subject to the higher thresholds. EPA also seeks suggestions for technical definitions of gasoline and diesel fuel.

The proposed regulatory text reflecting the establishment of higher thresholds for gasoline and diesel fuel when stored entirely underground at retail gas stations is located in section 370.10(a)(2) of today's rulemaking.

Within that proposed section, the term "retail gas station" has been defined as a retail gasoline facility principally engaged in selling gasoline to the public, and convenience stores engaged in selling gasoline to the public, for purposes of 40 CFR part 370 regulations implementing EPCRA sections 311 and 312.

EPA proposes to raise the reporting threshold for gasoline and diesel fuel at retail gas stations when held in tanks that are *entirely underground*. EPA has chosen to use the phrase "entirely underground" instead of "underground storage tank" (UST) to establish applicability of the proposed thresholds because, under RCRA, UST has a specific meaning that includes tanks with a significant portion of their volume above ground. USTs include tanks, the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. In today's proposal, EPA intends the proposed reporting thresholds to apply only to storage in tanks that are entirely underground, which generally mitigates the risk of catastrophic release.

EPA has had discussions with various stakeholders regarding the establishment of a higher reporting threshold for gasoline at retail gas stations. During those discussions, some State and local entities expressed a desire to continue to receive information on gasoline at retail gas stations, and a concern that they would not be able to get the information if it were not required under Federal regulations. EPA would like to know if these concerns are widespread among State and local governments. In addition, EPA seeks comments from SERCs, LEPCs and fire departments on whether the information on gasoline and diesel fuel at retail gas stations received under sections 311 and 312 is useful to them, and if so, how it is used. Some State entities have also expressed concern that raising the reporting threshold for gasoline and diesel fuel at retail gas stations may trigger other industries to request higher thresholds. As discussed above, EPA believes that gasoline and diesel fuel, when stored entirely underground and in compliance with the UST regulations, at retail gas stations, present a unique situation for which a higher reporting threshold is warranted.

EPA understands that some States generate funds for support of their EPCRA programs through fees collected from facilities that comply with section 312. Such States may oppose raising the thresholds for gasoline and diesel fuel, as proposed in today's rulemaking,

because of the potential for loss of revenue. EPCRA does not provide for annual Federal funds for State implementation of the EPCRA program. However, some Federal funds are available through EPA grants, or through other Federal agencies, to support emergency planning and community right-to-know programs (e.g., Hazardous Materials Emergency Preparedness Grants administered through the Department of Transportation). In addition, States that want to retain a fee system that includes retail gasoline stations could choose to establish lower thresholds for gasoline and diesel fuel under State law. EPA currently believes that routine reporting of gasoline and diesel fuel at retail gas stations, when stored entirely underground and in compliance with the UST regulations, is not necessary nationwide. The Agency further believes that the generation of fees is not sufficient justification for requiring such reporting, and will not consider State fee generation in its decision on whether or not to raise the reporting threshold for gasoline and diesel fuel at retail gas stations.

EPA is soliciting comments on these proposed regulatory changes, and on EPA's rationale for the changes. The idea of relieving retail gas stations from routinely reporting gasoline and diesel fuel under EPCRA sections 311 and 312 came from the suggestions of stakeholders, including the U.S. Small Business Administration (SBA). EPA would like to know whether there is general support among stakeholders and the public regarding this issue. EPA has included a June 18, 1995 letter from the Chief Counsel for Advocacy at SBA, related letters, and a contractor report prepared for the Office of Advocacy that discusses various regulatory alternatives for providing paperwork relief to retail gas stations, in the CERCLA Docket Office (Docket No. 300RR-1F-1).

EPA also seeks comment on whether or not it would be useful to provide a specific industry classification code (or codes) to help describe the universe of facilities to which the proposed higher threshold for gasoline and diesel fuel would apply. In addition, EPA seeks comments regarding whether it would be more helpful to provide a Standard Industrial Classification (SIC) code, or a North American Industry Classification System (NAICS) code, or both types of codes. NAICS is a new economic classification system that replaces the 1987 SIC system. On April 9, 1997, the Office of Management and Budget published a document in the **Federal Register** (62 FR 17288) regarding the

replacement of the 1987 SIC by the 1997 NAICS.

EPA believes that it can best serve the public by requiring a manageable quantity of reporting data, which can be supplemented by requests for additional information and the imposition of lower State or local thresholds when appropriate. EPA's objective is to find a sound balance between the amount of information collected, and the public benefit served by the information. In developing this proposal, EPA considered whether any chemicals or facilities, in addition to gasoline and diesel fuel at retail gas stations, should be relieved of routine reporting under sections 311 and 312 of EPCRA. EPA applied the same four factors discussed earlier in this section to other chemicals and facilities. For example, EPA applied the four factors to propane retailers and determined that these entities do not meet the factors necessary to warrant higher thresholds:

- **Propane**—EPA considered whether the reporting threshold for propane at propane retailers should be raised in a similar manner as for gasoline and diesel fuel at retail gas stations. From the perspective of community right-to-know (factor 1), the Agency believes the public and emergency officials are less familiar with the locations of propane retailers, and with propane itself and the associated hazards (factor 2), than the public and emergency officials are with gasoline and diesel fuel. EPA believes that propane is not generally stored entirely underground (factor 3), and also is not regulated by the UST program under RCRA (factor 4). Based on the application of the four factors to propane retailers, EPA believes that raising the reporting threshold under sections 311 and 312 for propane at propane retailers would not be protective of public health and the environment, and would not be consistent with the fundamental purposes of EPCRA.

EPA found that several other types of facilities presented situations similar to retail gasoline stations. At this time, however, the Agency does not believe the following facilities meet the community right-to-know criteria (factor 1) for inclusion into this higher reporting threshold because the public and emergency officials are generally less familiar with the location of these facilities, and may not know whether and where any particular facility stores gasoline and diesel fuel. Based on this belief, EPA is not proposing to raise the reporting threshold for the following entities. However, the Agency is requesting comment on whether communities nationwide are in fact

aware of the location of these facilities and whether they store gasoline and diesel fuel, and whether or not it would be appropriate to raise the threshold for the following types of facilities.

- **Motor pools, van and bus lines, rental car facilities and other vehicle fleets**—EPA considered whether the proposed higher reporting thresholds for gasoline and diesel fuel should apply to other facilities that store gasoline or diesel fuel, such as motor pools, van and bus lines, rental car facilities and other vehicle fleets. These types of facilities don't retail gasoline or diesel fuel, and not all of them have gasoline and diesel fuel. The public and local emergency officials may not be aware of the presence of gasoline or diesel fuel at these types of facilities and may not readily recognize these facilities as potentially containing hazardous chemicals (factor 1). As with retail gasoline stations, however, the public and emergency officials are generally aware of the hazards of gasoline and diesel (factor 2). Also, these types of facilities generally store the chemicals entirely underground (factor 3) and the underground tanks are subject to UST (factor 4). Nonetheless, these facilities do not distribute gasoline and diesel fuel in a retail manner, the public may not have access to these facilities, and the public is less likely to know the location of these chemicals at these facilities. Because EPA does not currently believe that these facilities meet factor 1, EPA is not proposing to raise the reporting thresholds for gasoline and diesel fuel at motor pools, van and bus lines, rental car facilities and other vehicle fleets at this time.

- **Marinas**—EPA also applied the factors to determine whether the proposed higher reporting thresholds for gasoline and diesel fuel should apply to marinas. Unlike retail gasoline stations, not all marinas have gasoline. Therefore, as with the other types of facilities discussed above, the public and local emergency officials may not be aware of the presence of gasoline or diesel fuel at these types of facilities or as readily recognize them as potentially containing hazardous chemicals (factor 1). However, like gas stations, marinas that store gasoline generally retail it to boat owners at pumps accessible to the public. As with retail gasoline stations, the public and emergency officials are generally aware of the hazards of gasoline and diesel fuel (factor 2). Also, like retail gasoline stations, marinas can store the gasoline and diesel fuel underground (factor 3) and would be subject to UST regulations (factor 4). The Agency however, is not proposing to raise the reporting threshold for

gasoline and diesel fuel when stored at marinas, at this time. Because the public and emergency officials may not be aware of whether or not a marina stores gasoline, the Agency believes continued reporting is warranted.

EPA will consider all comments received regarding alternate reporting thresholds for marinas, motor pools, van and bus lines, and rental car facilities. EPA believes that public comment could reveal that the public and emergency officials nationwide are aware of the presence and location of gasoline and diesel at some or all of these types of facilities, as at retail gas stations. If the public comments are conclusive that such types of facilities meet the community right-to-know criteria (factor 1), EPA may decide to add these facilities to the final rule or issue a supplementary notice with additional information and opportunity for public comment before making a final decision.

Should EPA find, based on public comment, that the public and emergency officials are aware of the presence of gasoline and diesel fuel at these other facilities discussed here, and decide to raise reporting thresholds for such facilities, the Agency would list the specific types of facilities in the regulation, with appropriate threshold levels. If EPA were to raise the reporting thresholds for such facilities, the threshold levels would be based upon the quantities of gasoline and diesel fuel that are routinely stored at these facilities, so that facilities with typical capacities would be relieved from reporting. EPA believes that the public and emergency officials would not be aware of the amount stored at facilities with above normal inventories, even if they were aware of the presence of gasoline and diesel fuel at such facilities. EPA seeks data that would assist it to determine the quantities routinely stored at such facilities, and also on whether quantities routinely stored would be the appropriate standards for use in establishing alternate thresholds. Were EPA to set an alternative threshold for such facilities for reporting of MSDSs under EPCRA section 311 and annual Tier I information under EPCRA section 312, EPA would still preserve public access to MSDSs and Tier II information in specific circumstances by retaining a reporting threshold of zero for response to a request for information by state or local officials, just as it is currently proposing to do for retail gas stations.

2. Relief From Routine Reporting Requirements for Substances With Minimal Hazards and Minimal Risks Under EPCRA Sections 311 and 312

A substance is subject to reporting under EPCRA sections 311 and 312 if OSHA's hazard communication standard, codified at 29 CFR 1910.1200, requires the owner or operator of a facility to prepare or have available an MSDS for that substance. See EPCRA sections 311(a)(1) and 312(a)(1). OSHA's hazard communication standard is designed to promote worker safety and health; the requirements of that standard are applicable to any hazardous chemical that is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency. The definition of hazardous chemical under OSHA's hazard communication standard is very broad, and includes any chemical which is a physical hazard or a health hazard (29 CFR 1910.1200(c)).

EPA believes that certain substances that may present a physical or health risk to employees in the workplace, and are therefore considered to be hazardous chemicals and subject to OSHA's hazard communication standard, may have minimal inherent hazards and may not, depending upon the circumstances, present a significant risk to the health of individuals in the community, to emergency responders on-site, or to the environment. Such substances, although important under OSHA, are not generally of regulatory significance under EPCRA sections 311 and 312. The reporting requirements under sections 311 and 312 are intended to enhance communities' and emergency response officials' awareness of chemical hazards, to facilitate the development of State and local emergency response plans, and to aid communities and emergency response officials in preparing for and responding to emergencies safely and effectively. Although hazardous chemical reporting under EPCRA sections 311 and 312 is not intended to duplicate the role that OSHA's hazard communication standard has of protecting worker safety, it is intended to extend the worker safety protection provided under OSHA to emergency response officials. As described below, EPA proposes to provide reporting relief for substances that are not of regulatory significance under EPCRA, using the Agency's authority to establish reporting thresholds. Under this proposal, relief from routine reporting means that facilities would not need to report MSDS and inventory information, except for reporting in response to

requests for information (the requirements for reporting in response to requests are discussed further below). EPA intends to accomplish relief from routine reporting by establishing infinite threshold levels for these substances.

The current threshold levels for reporting under EPCRA sections 311 and 312 are 500 pounds (or the threshold planning quantity (TPQ), whichever is lower) for extremely hazardous substances (EHSs), and 10,000 pounds for other hazardous chemicals. In the preamble to the proposed rule to set these threshold levels, EPA stated that the Agency "would have liked to establish risk-based reporting thresholds that take into consideration the hazards posed by the chemicals, the potential for a significant release, and the potential exposure of surrounding populations" (54 FR 12994, March 29, 1989). However, because of the tens of thousands of hazardous chemicals covered under sections 311 and 312, "a chemical-specific approach simply was not feasible." In today's proposed rule, EPA is reconsidering this approach for chemicals that are OSHA hazardous chemicals because of the way they are used in the workplace (and their potential for worker exposure) but have minimal inherent hazards and present minimal physical or health risks to individuals in the community and emergency response personnel on-site, and present minimal risks to the environment. EPA is seeking public comment on potential approaches to raise the reporting threshold or otherwise reduce the reporting burden for these chemicals that have minimal inherent hazards and pose minimal risks under the EPCRA sections 311 and 312 program.

EPCRA empowers EPA to establish reporting thresholds under sections 311 and 312 of EPCRA. Both sections 311(b) and 312(b) of EPCRA give EPA broad authority to establish threshold quantities for hazardous chemicals below which reporting is not required. Both statutory provisions also state that, in EPA's discretion, the thresholds may be based on classes of chemicals or categories of facilities. Thus, under the statute EPA's authority to establish thresholds includes, but is not limited to, thresholds that are based on classes of chemicals or categories of facilities. As noted previously, Congress broadly empowered EPA to establish thresholds so that EPA could "provide for the development of a manageable program." Conference Report at 5104. The legislative history also calls for EPA, in establishing thresholds under section 312(b) to "consider the degree to which the hazardous chemical, if released at

the facility, would endanger the health of individuals in the community, including emergency response personnel." Conference Report at 5104-5105.

EPA is proposing to establish an infinite threshold level for the class of chemicals with minimal inherent hazards, and presenting minimal risks, under the EPCRA sections 311 and 312 program (an infinite threshold level means a threshold level so great that, no matter what amount is present at a facility, the amount present is less than the threshold level). At the same time, the Agency believes that the local community is best situated to make judgments about the level of risk presented in site-specific circumstances. Thus, EPA is proposing to establish specific criteria governing the class of substances that may qualify for an infinite threshold. With this approach, EPA is endeavoring to promote decision-making about information routinely reported under EPCRA sections 311 and 312, based on community specific concerns. EPA seeks public comment on this proposal, and also requests other suggestions for ways to bridge community-based judgments about the level of risk presented by substances in specific circumstances, with EPA's authority to establish thresholds.

EPA proposes the establishment of an infinite threshold level for the class of chemicals with minimal inherent hazards and presenting minimal risks under the EPCRA sections 311 and 312 program. The criteria for determining whether a substance may, under certain circumstances, be included within this class of chemicals would govern whether individual substances are assigned an infinite threshold level and therefore not subject to routine reporting under EPCRA sections 311 and 312. EPA proposes to relieve this class of substances from routine reporting under EPCRA sections 311 and 312 in only those cases where the specific conditions warrant such relief.

The proposed threshold is as follows. A hazardous chemical would be deemed to have a minimal hazard and present a minimal risk under the EPCRA sections 311 and 312 program, and the owner or operator would be relieved from the routine reporting requirements under these provisions, if the chemical meets each of the following criteria:

(1) The chemical has a minimal inherent hazard and presents a minimal physical or health risk, to individuals in the community beyond the site or sites on which the facility is located, and to emergency responders on-site, under

normal conditions of production, use, or storage, or in a foreseeable emergency.

(2) The chemical has a minimal inherent hazard and presents a minimal risk, to the environment beyond the site or sites on which the facility containing the chemical is located.

(3) The SERC, the LEPC and the fire department with jurisdiction over the facility have been notified of the facility's assessment regarding a chemical that has a minimal inherent hazard and presents a minimal risk. (The proposed requirements for notification are discussed further below.)

In today's proposed regulation, paragraph 370.10(a)(2)(v) provides that, for any chemical meeting the specific criteria for minimal inherent hazards and minimal risks under proposed section 370.11, the threshold level is infinite. Proposed section 370.11 provides the criteria that must be met for a hazardous chemical to qualify for the proposed infinite threshold level, including the proposed requirements for notification to the SERC, the LEPC and the fire department.

It is important to note that, under today's proposed rule, the following substances do not qualify for the infinite threshold level: substances that are listed as Extremely Hazardous Substances (EHSs) under EPCRA section 302 (40 CFR part 355); regulated substances under the Clean Air Act (CAA) Risk Management Program (RMP) (40 CFR part 68); hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (40 CFR part 302); toxic chemicals under the toxic chemical release reporting requirements of EPCRA section 313 (40 CFR part 372). See proposed paragraph 370.11(a). Substances that are covered under these other programs are regulated because of the significant hazards they present; so such substances could not meet the proposed criteria for minimal hazards. EPA seeks public comment on these or any other lists of regulated substances that should be categorically excluded from the proposed class of chemicals with minimal inherent hazards and presenting minimal risks, under the EPCRA sections 311 and 312 program.

The application of the proposed infinite threshold depends on the conditions of a particular substance at a particular facility. The level of risk associated with a substance depends on a variety of chemical and facility-specific factors, including the identity of the substance involved and the nature of the facility. A substance may meet the proposed criteria for an infinite

threshold at a particular facility, due to the relevant circumstances at that facility, but may not meet the criteria at a different facility.

The infinite threshold level proposed today could only apply to substances that have a minimal inherent hazard. EPA doesn't intend the proposed threshold to apply to any substance that, because of its inherent hazards, could present a significant risk to emergency responders at a facility (or to the surrounding community or environment) in the event of a release. Examples of substances which might be covered by the proposed infinite threshold may include substances that are OSHA hazardous chemicals solely because of an irritation hazard only to employees regularly exposed in the workplace, but for which there is no other acute health hazard.

Implementation of the proposed infinite threshold would be optional—any facility owner or operator would have a choice whether to make an assessment regarding a hazardous chemical present at their facility. Upon making an assessment that a hazardous chemical met the criteria for the infinite threshold level, a facility owner or operator would notify the SERC, the LEPC and the local fire department of such assessment, the name of the chemical, and any conditions relevant to the assessment. Any facility owner or operator may choose not to make use of the proposed threshold for any hazardous chemicals at their facility, in which case they would continue to routinely report all covered hazardous chemicals present at their facility above threshold levels.

EPA is considering several options regarding the notification requirements associated with this relief from routine reporting requirements. In weighing each option, EPA will need to consider the requirements associated with each notification option, any burden to government entities and industry associated with each option, and the government entities' ability to ensure that they continue to receive information that they believe is necessary. While the proposed regulatory text includes only one of these options, based on this document and opportunity for public comment, EPA may, in the final rulemaking action, choose to promulgate any combination of the proposed options discussed below. EPA seeks comments on all of the notification options discussed below.

In today's document, EPA proposes that any facility owner or operator that makes an assessment that a specific substance meets the infinite threshold

criteria notify the SERC, the LEPC, and the local fire department with jurisdiction over the facility (see proposed section 370.11(b)(1)). The SERC, the LEPC or the local fire department may request additional information on the basis of the assessment or otherwise question the assessment. The required notification must include the name of the chemical for which an assessment has been made and any conditions relevant to that assessment. EPA recommends, but does not require, this notification be in writing. If a facility owner or operator makes an assessment, but fails to follow the required notification procedures, the substance in question would not qualify for the proposed infinite threshold—such a substance would continue to be subject to routine reporting. The notification need only be made once (not annually), provided that there are no changes in the conditions of that substance at the facility that might affect whether the substance continues to meet the proposed criteria. Requirements for re-notification due to a change in conditions are discussed further below.

In the paragraph above, EPA has stated that the notification of a facility's assessment regarding a hazardous chemical would not have to be in writing. Another option would be to require that such notification be in writing. EPA could also require, as part of the notification, that the facility provide a brief description of why a chemical meets the criteria for minimal hazard/minimal risk chemicals. EPA requests comment on the contents of the notification, as well as on whether or not EPA should require the notification be in writing.

The proposed notification requirement imposes a minimal burden to qualify for relief from routine reporting. This option does not require EPA, the SERC, the LEPC or the fire department to review the facility's assessment. However, EPA, the SERC, the LEPC or the fire department may evaluate the assessment and may contact the facility to discuss the assessment at any time. In addition, EPA and these three other governmental entities may bring enforcement and/or civil actions if a facility uses the infinite threshold for a hazardous chemical that does not meet the proposed criteria.

Another option would include requiring a notice of acceptance from the SERC, the LEPC and local fire department before a facility could apply the proposed infinite threshold level. In this case, the infinite threshold would apply only for reporting to an entity that has accepted the assessment. Therefore,

if a facility owner or operator does not receive notice of acceptance from the SERC, the LEPC or the fire department, the facility's assessment has effectively been rejected, and the infinite threshold level does not apply to the hazardous chemical in question (for purposes of reporting to any entity that has not accepted the determination). If a SERC, LEPC, or fire department did not notify a facility that its assessment regarding a specific substance had been accepted, but the facility owner or operator failed to report the substance as required under sections 311 and 312 and the implementing regulations (that is, they failed to comply with the routine reporting requirements and did their reporting as if that substance was subject to an infinite threshold level), such a facility could be subject to an enforcement action.

SERCs, LEPCs and local fire departments each evaluate, and set priorities for, emergency planning and hazardous chemical community right-to-know under EPCRA sections 311 and 312, and may have their own information needs. Thus, one entity may agree with the facility owner or operator that the threshold properly applies, and another entity may disagree. Because each SERC, LEPC or local fire department would have discretion concerning the acceptance or rejection of facilities' assessments regarding specific OSHA hazardous chemicals, a particular quantity of a specific substance might be reportable at one facility, and not reportable at another facility.

In addition, the SERC, the LEPC or the local fire department might choose to accept the facility's assessment, but only under specific conditions. Thus, the facility owner or operator, the SERC, the LEPC, or the local fire department might each establish conditions under which a specific substance is covered by the proposed infinite threshold. Some examples of conditions on the use of the proposed infinite threshold could include: type of storage vessel, or whether stored aboveground or underground.

Another option would be to allow the SERC, the LEPC, and the local fire department to reject the facility's assessment. In this case, the SERC, the LEPC, or the fire department would notify the facility only if its assessment had not been accepted. The substance in question would not be covered by the proposed infinite threshold for purposes of reporting to that specific entity that rejected the assessment.

An additional option would require the facility to maintain the records that served as the basis for the assessment.

Under this option, the facility would not have to notify the SERC, the LEPC and the local fire department of its assessment. The facility, however, would need to be able to produce the assessment records upon request.

The Agency is seeking comments on all of these notification options. In the final rulemaking action, the Agency may promulgate any option or combination of options proposed above.

A hazardous chemical would no longer qualify for the proposed infinite threshold level if a change occurred that could affect whether the chemical continued to meet the specific criteria under proposed section 370.11. Such a substance would instead be subject to the usual hazardous chemical reporting threshold (generally 10,000 pounds), and would be routinely reported in accordance with EPCRA sections 311 and 312 and the implementing regulations. If the facility owner or operator made an assessment that, under the changed conditions, the substance met the specific criteria for minimal hazards and minimal risks, it would be necessary to repeat the proposed notification procedures (see proposed section 370.11(b)(3)). Until the notification requirements were met, the chemical would need be routinely reported, based on the applicable threshold level (generally 10,000 pounds).

While EPA intends, in this proposal, to provide relief from reporting material safety data sheets (MSDSs) under EPCRA section 311 and annual Tier I inventory information under EPCRA section 312, public access to MSDSs and Tier II inventory information regarding substances fitting the proposed criteria would be preserved in specific circumstances because the threshold for reporting in response to a request for information (by a State or local official) would remain zero. In other words, EPA is not proposing any changes to the existing requirements under EPCRA regarding public access to hazardous chemical information. These requirements are discussed in detail in part IV.A.1. of this document. In addition, State and local governments always may choose to establish lower thresholds under State or local law, if appropriate.

EPA requests comments concerning the proposed infinite threshold described here. EPA also requests comments regarding whether the specific criteria proposed will achieve the goal of establishing a class of substances that can be relieved from routine reporting burdens without significant risk to the community including emergency response

personnel, and seeks suggestions regarding additional or different criteria to achieve that goal.

EPA seeks comments on a number of issues regarding the implementation and administration of the proposed threshold described here. The one-time notification described above (with re-notification if warranted by changes in conditions) is, in EPA's view, a less burdensome requirement than the annual submission of information—EPA requests public comment on whether such a notification would, in fact, be less burdensome than annual reporting. EPA would also like to know if SERCs, LEPCs and local fire departments would be concerned that the burden placed on them to review and respond to such notifications would be significant. EPA also seeks comment on imposing conditions on the use of the proposed infinite threshold level. Additionally, EPA is interested in public comment on whether there are any concerns over the inconsistencies that may develop in reporting, since a specific substance might be reportable at one facility, and not be reportable at another facility, under this proposal.

In today's rulemaking, EPA is proposing the above approach to provide relief for facilities from routinely reporting substances that have minimal hazards, and present minimal risks to the community and to emergency response personnel, and present minimal risks to the environment. EPA is also exploring an alternative approach to achieve that goal, and is seeking feedback on that alternative approach. Under the alternative approach, any substance which was determined to have minimal hazards and present minimal risks, using the proposed criteria described above, would be put into a newly created subset of OSHA hazardous chemicals that would be called Type 2 hazardous chemicals under EPCRA. Type 2 hazardous chemicals would be subject to the same reporting thresholds (generally 10,000 pounds), and reporting deadlines, as all hazardous chemicals that are reportable under EPCRA sections 311 and 312, but the information requirements under section 312 would be reduced. Under section 312 and the implementing regulations, the maximum amount and average daily amount of hazardous chemicals are to be reported in ranges. For Type 2 hazardous chemicals, the reporting ranges would be much broader than the usual ranges. The ranges would be so broad that, each year, the range reported for a Type 2 hazardous chemical would not likely change. In addition, a facility owner or operator would be able to

incorporate by reference information previously reported on a Type 2 hazardous chemical, in the manner described in part V.A.4 of this document. In other words, if the information regarding a Type 2 hazardous chemical did not change from year to year, it would not be necessary to report any new information for that specific hazardous chemical. It would, however, be necessary to report that the information submitted the prior year for that hazardous chemical was incorporated by reference into the current report. A detailed discussion on the concept of incorporation by reference, including issues and concerns, is found in part V.A.4 of this preamble. In order to report a Type 2 hazardous chemical, a facility owner or operator would need to provide notice to the SERC, the LEPC and the local fire department of their assessment that a hazardous chemical was of Type 2. The notice requirement might be satisfied by providing a brief explanation, when submitting inventory information under section 312, of the minimal inherent hazards associated with a specific substance, and of the conditions under which that substance presents minimal risks. EPA will review the public comments received regarding this alternative approach, and may consider publishing a supplemental proposal if this approach is feasible.

In today's document, EPA seeks to relieve facilities from routine reporting of substances that are not generally relevant for the hazardous chemical community right-to-know and emergency planning purposes of EPCRA sections 311 and 312, but that are considered hazardous chemicals under OSHA because of the way they are used in the workplace. While EPA's goal is to relieve facilities from routine reporting of information that is not useful to the community, EPA does not intend to compromise communities' right-to-know. EPA intends, in this proposal, to achieve this goal in a manner that is reasonable and also consistent with the requirements under the EPCRA statute. EPA seeks public comments on the feasibility of the various alternatives discussed here, and also seeks suggestions on any other ways that this goal may be achieved.

3. Relief From Routine Reporting for Sand, Gravel and Rock Salt Under EPCRA Sections 311 and 312

As discussed above, a substance is subject to EPCRA sections 311 and 312 if OSHA's hazard communication standard, codified at 29 CFR 1910.1200, requires the owner or operator of a facility to prepare or have available an

MSDS for that substance. OSHA's hazard communication standard is designed to protect worker safety, and the requirements of that section are applicable to any hazardous chemical that is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency. The definition of hazardous chemical under OSHA is very broad. EPA believes that certain substances that may present a physical or health hazard to employees in the workplace (and are therefore considered to be hazardous chemicals and subject to OSHA's hazard communication standard) have minimal inherent hazards, and present minimal environmental risks and minimal physical or health risks to the community or to emergency responders on-site; therefore these substances are not generally of regulatory significance under EPCRA sections 311 and 312. Also, as discussed in the previous part of the document, sections 311(b) and 312(b) of EPCRA allow EPA to establish threshold quantities for hazardous chemicals below which no facility needs to report (except in response to a request for information).

EPA believes that sand, gravel and rock salt, which may be considered hazardous chemicals under OSHA's hazard communication standard, have minimal inherent hazards and generally would not have the potential to present significant risks to the community or to emergency responders on-site, regardless of site-specific circumstances, and are therefore not of regulatory significance under EPCRA sections 311 and 312. Specifically, EPA believes that sand, gravel and rock salt meet the following two criteria:

(1) Sand, gravel and rock salt have a minimal inherent hazard and present a minimal physical or health risk, to individuals in the community beyond the site or sites on which the facility is located, and to emergency responders on-site, under normal conditions of production, use, or storage, or in a foreseeable emergency.

(2) Sand, gravel and rock salt have a minimal inherent hazard and present minimal risks, to the environment beyond the site or sites on which the facility containing the chemical is located.

The threshold for reporting hazardous chemicals under EPCRA sections 311 and 312 is currently 10,000 pounds for the majority of substances. In today's rulemaking, EPA is proposing to establish an infinite threshold level for sand, gravel and rock salt. An infinite threshold level means that, regardless of

the amount of sand, gravel or rock salt present at a facility at any one time, the amount would not trigger routine reporting under sections 311 and 312. Section 370.10(a)(2)(iv) in today's proposed rule contains the proposed infinite threshold level for sand, gravel and rock salt.

Setting this infinite threshold level would not create an exemption from reporting, however, because reporting would still be required in response to a request. While EPA intends, in this proposal, to provide relief from reporting material safety data sheets (MSDSs) under EPCRA section 311 and annual Tier I inventory information under EPCRA section 312, public access to MSDSs and Tier II inventory information regarding sand, gravel and rock salt would be preserved in specific circumstances because the threshold for reporting in response to a request for information (by a State or local official) would remain zero. In other words, EPA is not proposing any changes to the existing requirements under EPCRA regarding public access to hazardous chemical information. The existing requirements are discussed in detail in part IV.A.1. of this preamble, above. In addition, States and local governments always may choose to establish lower thresholds under State or local law, if appropriate.

A substance such as gravel or sand may be subject to OSHA's hazard communication standard because, for example, of the hazard posed by respirable dust. EPA understands that such dust may present a health hazard to employees who are regularly exposed to it in the workplace. However, EPA believes such dust would not pose an acute hazard to emergency responders or to the surrounding community, so it is not of regulatory significance under EPCRA sections 311 and 312. EPA would like to achieve a sound balance between the amount of information generated under sections 311 and 312, and the value of that information. EPA believes that, although sand, gravel and rock salt may fit OSHA's broad criteria for hazardous chemicals, they are not generally relevant for the hazardous chemical community right-to-know and emergency planning purposes of EPCRA.

EPA is interested in public comments addressing its belief that sand, gravel and rock salt warrant infinite threshold levels to exclude these substances from routine reporting under EPCRA sections 311 and 312. EPA seeks public input on any emergency situations in which any of these three substances threatened the health or safety of emergency response officials or the surrounding community.

Additionally, EPA requests public input regarding any other specific hazardous chemicals that may also generally not warrant routine reporting under sections 311 and 312.

While EPA is proposing to generally relieve sand, gravel and rock salt from being routinely reported under EPCRA sections 311 and 312, EPA is also proposing in today's document to relieve other hazardous chemicals from routine reporting in specific cases where the conditions warrant such relief (see part IV.A.2 of this document, which is headed "Relief From Routine Reporting Requirements for Substances With Minimal Hazards and Minimal Risks Under EPCRA sections 311 and 312"). EPA seeks public comment on whether sand, gravel and rock salt should, in fact, be absolutely excluded from routine reporting as discussed here, or whether these three substances should be treated on a case-by-case basis, in the manner described in part IV.A.2 of this document.

B. Other Regulatory Changes

1. Reporting of Mixtures Under EPCRA Sections 311 and 312

In today's document, EPA is rewriting in plain English format the current regulation for applying threshold quantities to mixtures and reporting mixtures under EPCRA sections 311 and 312, and reorganizing the regulation to improve understanding of the requirements (a detailed discussion on plain English format is provided in part VI.A. of this document). In the preamble discussion below, EPA also generally explains the mixture requirements. Although the proposed regulation has been rewritten and reorganized, the only substantive changes proposed today to the existing mixture regulations are the four specific regulatory revisions explained below. EPA seeks public comment on those particular proposed regulatory revisions. EPA is not re-opening for public comment any other provisions of the mixtures regulation contained in today's document, as the regulation is a restatement of the existing regulation in plain English format. However, EPA will consider public comment on the limited issue of whether EPA, in restating and reorganizing the existing regulatory requirements, has inadvertently changed the meaning.

A facility is subject to sections 311 and 312 of EPCRA if the facility must prepare or have available an MSDS for a hazardous chemical under the Occupational Safety and Health Act (OSHA) and regulations issued under that Act. The OSHA regulations allow

that MSDSs may provide hazard information on a mixture that contains hazardous chemicals, or provide hazard information on the individual hazardous chemical components of that mixture. For this reason, facilities subject to EPCRA sections 311 and 312 might have MSDSs for mixtures, or for individual hazardous chemical components of mixtures. Therefore, the reporting requirements under sections 311 and 312 permit the choice of reporting a mixture as the mixture itself or by its hazardous chemical components.

EPCRA sections 311(a)(3) and 312(a)(3) contain the statutory provisions for reporting on mixtures containing hazardous chemicals. These provisions state that for a mixture of hazardous chemicals, a facility may meet the reporting requirements of section 311 of EPCRA by submitting an MSDS (or a list) for the mixture itself, or for each hazardous chemical component in the mixture. Similarly, a facility may meet the reporting requirements of section 312 by providing inventory information for the mixture itself, or for each hazardous chemical component of the mixture. If an MSDS (or listing) and inventory form are submitted for a hazardous chemical which is a component of a mixture (instead of for the mixture itself), and if more than one mixture at a facility contains the same hazardous chemical, only one MSDS (or one listing) and one entry on the inventory form is necessary for that hazardous chemical.

In the current regulation, section 370.28 contains the requirements for applying the reporting threshold to mixtures containing hazardous chemicals, and for reporting such mixtures, under EPCRA sections 311 and 312. Section 370.14 in today's proposed regulation provides the requirements for mixtures containing hazardous chemicals. The regulatory language in proposed section 370.14 generally reiterates the current regulation. However, four regulatory revisions are proposed, and are discussed below.

In today's document, EPA proposes to present some of the more complex aspects of the mixture requirements in table format (see proposed section 370.14(b)). With the four exceptions identified below, EPA is merely restating the existing regulatory requirements in an improved format and is not re-opening the underlying regulations for public comment (although EPA will consider public comment on the narrow issue of whether it has accurately rewritten the existing regulations). A detailed

comparison between the current regulation (existing section 370.28) and the proposed regulation (proposed section 370.14) follows:

- Section 370.28(a) in the current regulation provides that the owner or operator of a facility may meet the requirements for MSDS and Tier I information reporting 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. In today's proposed regulation, section 370.14(a) and the table in section 370.14(b) repeat this basic reporting option, without substantive revision.
- Section 370.28(a) in the existing regulation also provides that, where practicable, the reporting of mixtures by a facility be consistent for inventory reporting and MSDS reporting. The requirement for consistent reporting is provided, without substantive change, in proposed section 370.14(d) and is also reflected in the reporting requirements in the proposed table at section 370.14(b). (The requirements for consistent reporting are discussed below.)
- Section 370.28(b)(1) in the current regulation provides the requirements for calculating the quantity of a hazardous chemical component present in a mixture, and proposed section 370.14(c) repeats those requirements without substantive change.
- Section 370.28(b)(2) in the existing regulation provides that, if the reporting is on the mixture itself, the total quantity of the mixture shall be reported. This is the first provision where EPA is proposing a substantive regulatory revision for public comment. Proposed section 370.14(a)(2) and the table in proposed section 370.14(b) in today's regulation provide the requirements for reporting mixtures. Those proposed sections do not include reference to reporting "the total quantity of the mixture," but instead cross-reference the EPCRA sections 311 and 312 information requirements for reporting elsewhere within the proposed regulation. The table in proposed section 370.14(b) directs the reader to proposed sections 370.30 and 370.40, which provide the information requirements. EPA therefore believes it is not necessary to retain the current regulatory language in section 370.28(b)(2) and requests public comment on the proposed deletion of this provision.
- Section 370.28(c)(1) in the existing regulation provides EPA's requirements for applying threshold quantities to hazardous chemicals that are EHSs,

when they are components in mixtures. That section provides that all quantities of an EHS present at a facility be added together to determine if the reporting threshold has been equaled or exceeded— including the quantity present as a component in all mixtures and all other quantities of the EHS at the facility. In today's proposed regulation, the requirement to add together all quantities of an EHS present at the facility when applying the reporting threshold is provided in the table in proposed section 370.14(b) without substantive revision. However, one limited substantive change is proposed to that requirement—language has been added 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 that particular mixture is also being applied as a whole toward the threshold level for that mixture. This is the second substantive regulatory revision that EPA is proposing to the mixture regulations. EPA requests public comment on the substance of this clarification.

- Section 370.28(c)(2) in the existing regulation provides that, when reporting an EHS that is a component of a mixture, the owner or operator of a facility has the basic option to report either with respect to each component in the mixture that is a hazardous chemical, or with respect to the mixture itself. As noted, this option is provided (for all hazardous chemicals including EHSs) without substantive revision in proposed section 370.14(a) and the table in proposed section 370.14(b).

- Note that section 370.21(b) in the existing regulation (which provides that facility owners or operators have the option to submit a list of hazardous chemicals instead of submitting MSDSs), also contains a provision on reporting of mixtures. Proposed section 370.30(a)(2), which contains the same provision that owners or operators have the option to submit a list instead of MSDSs, does not contain any provisions on reporting of mixtures because in today's proposed rule the requirements for reporting mixtures are consolidated in proposed section 370.14.

- In today's regulation, the table in proposed section 370.14(b) specifies EPA's requirements for applying the threshold quantity to a hazardous chemical component in a mixture, when the hazardous chemical is *not* an EHS. Proposed section 370.14(b) provides that the owner or operator of a facility may choose to either (1) determine the total quantity of a (non-EHS) hazardous chemical component present throughout the facility, by adding together the quantity present as a component in all

mixtures and all other quantities of that hazardous chemical (including the quantity present in a mixture even if that particular mixture is also being applied as a whole toward the threshold level for that mixture), or (2) determine the total quantity of the mixture itself present throughout the facility. EPA proposes today to adopt regulatory revisions to clarify these requirements for applying threshold quantities for mixtures containing non-EHS hazardous chemicals, and requests comments on the substance of this proposed regulatory revision. This is the third substantive regulatory revision that EPA is proposing to the mixture requirements today. This proposal is discussed further below.

- EPA is also proposing to add regulatory language to specify requirements for determining if a threshold amount of a non-EHS hazardous chemical is present, when that chemical is present both by itself and as a component in mixture(s). Proposed section 370.14(e) provides that, if a 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 present to apply the threshold level. To calculate this quantity, you must add together all quantities of the hazardous chemical present at the facility, including the quantity present in all mixtures. EPA proposes today to adopt this regulatory revision, and requests comments on the substance of the revision. This is the fourth substantive regulatory revision that EPA is proposing to the mixture regulations today. This proposal is discussed further below.

As discussed above, EPA is proposing regulatory revisions to clarify the requirements for applying threshold quantities to mixtures containing hazardous chemical components that are *not* EHSs, by adding regulatory language in proposed section 370.14(b) that provides the choice of either (1) determining the total quantity of a hazardous chemical component present, or (2) determining the total quantity of the mixture itself. Whenever you must apply a threshold to the total quantity of a non-EHS hazardous chemical present at any one time, this proposed revision clarifies that you can calculate either the total quantity of the hazardous chemical component, or the total quantity of the mixture (considering the mixture itself as the "hazardous chemical"). Both of these options to determine the quantity of a hazardous chemical will result in a reasonably accurate reflection of the total quantity of a non-EHS hazardous

chemical present at a facility at any one time—which is the amount to which the threshold levels should be compared. The two options for applying threshold quantities to mixtures containing non-EHS hazardous chemical components are explained below:

Option (1) In this case, the total quantity of a non-EHS hazardous chemical component is determined. To establish whether the reporting threshold for that hazardous chemical component has been exceeded, calculate the total quantity of that hazardous chemical present throughout the facility at any one time, including as a component in *all* mixtures (even in a mixture that will be separately applied toward the threshold level for that mixture), and all other quantities present. See Conference Report at 5105. Section 370.14(c) in today's proposed regulation provides instructions for determining the quantity of a non-EHS hazardous chemical component present in a mixture. Compare the total quantity of that hazardous chemical to the hazardous chemical reporting threshold (the reporting threshold for all non-EHS hazardous chemicals is currently 10,000 pounds—today EPA is proposing to change the thresholds for certain circumstances, as discussed elsewhere in this preamble).

Option (2) In this case, the total quantity of the mixture itself is determined. To establish whether the reporting threshold for that mixture has been exceeded, calculate the total quantity of that particular mixture present throughout the facility at any one time. Compare the total quantity of that mixture to the hazardous chemical reporting threshold.

As discussed above, EPA is also proposing regulatory revisions to clearly establish that, if a particular non-EHS hazardous chemical is present *both* by itself *and* as a component in mixture(s) at your facility, you must determine the total quantity of the hazardous chemical to see if it meets or exceeds the threshold. To determine the total quantity of a hazardous chemical present, you must add together all quantities of the hazardous chemical, including the quantity present in all mixtures (even in a particular mixture that is being applied separately toward the threshold level for that mixture). For example, in the case of a manufacturer that produces or obtains benzene and formulates 200 mixtures with the benzene, the threshold level would apply to the total quantity of benzene at the facility, where some benzene is still in bulk storage and some has been formulated into mixtures. EPA understands that there has been confusion in the past about EPA's requirements for applying threshold quantities when a non-EHS hazardous chemical is present both by itself and as a component in mixture(s). This regulatory revision clearly establishes a

method of calculating the quantity that will result in an accurate reflection of the total quantity present at any one time—which is the amount to which the threshold levels should be compared. Applying the threshold to a non-EHS hazardous chemical component by itself without considering its presence in mixtures will not completely reflect the amount of the hazardous chemical present. Because you must already apply the threshold to the hazardous chemical itself (when the hazardous chemical is present both by itself and in mixtures), you can only do so accurately by adding together all quantities of that hazardous chemical present.

EPA has required that, where practicable, reporting for mixtures be done consistently for both sections 311 and 312 of EPCRA (this requirement is in section 370.28(a)(2) in the existing regulation). In today's proposed regulation, section 370.14(d) similarly states, without substantive revisions, that for each specific mixture, reporting must be done consistently for both sections 311 and 312, “* * * unless impracticable.” In other words, if a facility reports a specific mixture as a whole under section 311, the facility is also required to report that mixture as a whole under section 312, unless the facility can show that it is impracticable to do so. Similarly, if a facility reports a specific mixture by its hazardous chemical components under section 311, the facility is also required to report that mixture by its hazardous chemical components under section 312, unless the facility can show that it is impracticable to do so.

EPA's intention is to be reasonable in establishing reporting requirements. Consistent with the existing regulation, the phrase “unless impracticable” has been included to account for specific cases where the owner or operator of a regulated facility can demonstrate that it wouldn't be practicable to report consistently under sections 311 and 312. EPA believes that in all but a few unique cases, consistent reporting for sections 311 and 312 is practicable. It is important for the MSDS information to correspond with the inventory information to ensure consistency in the qualitative and quantitative information received about the hazards of covered chemicals. The MSDS information and inventory information are intended to be used together to determine the chemical hazards present at a facility—the MSDS provides information on the hazards associated with the types of chemicals that are reported with the inventory information. See Conference Report at 5105.

As discussed above, EPCRA sections 311(a)(3) and 312(a)(3) provide that, when reporting mixtures containing hazardous chemicals, facility owners or operators have a choice to report in reference to the mixture itself, or in reference to each hazardous chemical component of the mixture. EPA, of course, recognizes this basic choice for reporting mixtures. However, EPA recommends that whichever way a facility owner or operator chooses to report for one mixture, the same choice should be made for every mixture at the facility. In other words, if a facility reports a specific mixture as a whole under sections 311 and 312, then EPA suggests that each mixture at the facility be reported as a whole under sections 311 and 312. Similarly, if a facility reports a specific mixture by its hazardous chemical components, then EPA suggests that each mixture at the facility be reported by its hazardous chemical components. EPA encourages consistent reporting throughout a facility because of various programmatic reasons. Consistent reporting throughout a facility facilitates the calculations necessary for reporting, improves the clarity of the reported information consistent with the emergency planning and response purposes of EPCRA, and reduces duplicative reporting. However, EPA understands that it may not always be reasonable to report consistently throughout a facility and recognizes that the owner or operator of the facility has discretion to determine whether to report based on the mixture or the hazardous chemical components of the mixture.

While the plain English format proposed today is intended to improve the public's understanding of EPA's regulations, it is not intended to change the substantive requirements in EPA's existing regulations. As discussed in detail above, EPA has proposed four specific substantive regulatory revisions regarding mixtures including (1) the removal of reference to reporting “the total quantity of the mixture” from the section containing the mixture requirements (see existing section 370.28(b)(2) and proposed section 370.14); (2) the additional language in proposed section 370.14(b) to make the clarification that, when determining the total quantity of an EHS present at a facility, the quantity present in a mixture must be included even if that particular mixture is also being applied as a whole toward the threshold level for that mixture; (3) the additional language in proposed section 370.14(b) to clarify how to apply threshold levels

for mixtures containing hazardous chemical components that are *not* EHSs; and (4) the additional language in proposed section 370.14(e) to clearly establish how to determine the total quantity of a hazardous chemical present, when the chemical is present both by itself and as a component in mixture(s).

EPA requests public comment on the specific substantive proposed regulatory revisions in today's document. EPA also seeks public comment on the plain English format in which the proposed regulation is written, but only on the limited issue of whether any unintended substantive changes have been made to the mixture requirements as a result of re-writing and reorganizing the regulation. Except for the four specific substantive regulatory revisions listed above, EPA is not intending any other substantive changes to the mixture requirements under sections 311 and 312 today. The mixture requirements have been in effect for several years, and EPA is not re-opening for public comment any other substantive aspects of those requirements in this document. EPA is seeking public comments on ways to improve the plain English format to make the mixture requirements clearer and less confusing without changing the substantive requirements. EPA similarly requests public comment on the adequacy and usefulness of the table in proposed section 370.14(b), as well as suggestions for improving the table's clarity.

2. Tier I and Tier II Inventory Forms and Instructions

In today's rulemaking, EPA is proposing to remove the Tier I and Tier II inventory forms from the body of the regulation. Section 312(g) of EPCRA requires the EPA to publish a "uniform format for inventory forms." However, the forms are not required by the statute to be published in regulations. Removing the forms from the regulation would shorten and simplify the regulations, and allow EPA to change the forms more easily to reflect new information and experience. (Note that any change to the forms would still require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, including public notice and comment when required.) EPA would continue to publish the uniform Tier I and Tier II forms, which would be readily available on the CEPPPO Internet site (www.epa.gov/ceppo), or by contacting the National Center for Environmental Publications and Information (NCEPI) at 800/490-9198. The Tier II form is

currently available on the CEPPPO Internet site.

EPA is proposing today to remove both the forms and corresponding instructions from the regulation. The Tier I form and instructions are in section 370.40 in the existing regulation, and the Tier II form and instructions are currently in section 370.41. Neither the forms themselves, nor the instructions, are included in today's proposed rule. However, EPA will continue to make the forms and instructions available to the public, as indicated above.

At the same time, EPA's proposed rule would continue to contain a narrative description of the Tier I and Tier II informational requirements. Specifically, sections 370.41 and 370.42 in the proposed rule set forth the required Tier I and Tier II information, respectively.

Today EPA is proposing two changes to the Tier I and Tier II information requirements. The first proposed change is to require facilities to report a Facility Identification Number with their Tier I (or Tier II) information. The Facility Identification Number is part of a standardized facility identification scheme the Agency is currently undertaking, and is discussed further in part IV.B.4. of this document. The second proposed change to the information requirements is to require facilities to report the NAICS code for their facility instead of the SIC code, as currently required. Replacement of the SIC codes by the NAICS codes is discussed below. The Tier I and Tier II information requirements in today's proposed rule are the same as the existing information requirements, with the exception of these two proposed changes. EPA is not seeking public comment on any other aspect of the existing information requirements.

The facility identification portions of the existing Tier I and Tier II forms require reporting of the primary SIC code for the facility. However, the SIC system is currently being replaced by the NAICS system, which is a new economic classification system that has been developed to provide common industry definitions for Canada, Mexico, and the United States. OMB published a document in the **Federal Register** regarding the replacement of the 1987 SIC by the 1997 NAICS, on April 9, 1997. In today's proposed rule, the sections that list the Tier I and Tier II information requirements (proposed sections 370.41 and 370.42, respectively) require the NAICS code instead of the SIC code.

EPA seeks comment on requiring facilities to report the NAICS code instead of the SIC code. In particular,

EPA seeks comment on whether it is premature or otherwise inappropriate to adopt NAICS codes at this time, and whether EPA should therefore retain usage of the SIC codes for the time being. EPA also invites comment on whether it would be sensible to allow reporting of either the SIC code or the NAICS code (and an indication of which code was being reported), or to require reporting of both codes, during a period of transition from use of the SIC to the NAICS. EPA understands that different agencies may begin using the NAICS codes for regulatory purposes at different times. If EPA transitions to using the NAICS codes in today's proposed rule, this change may not be consistent with the timing of some other agencies' use of the new codes. EPA seeks comment on the appropriate time to transition to the NAICS codes for purposes of the reporting requirements under today's proposed rule. EPA also seeks public input on making a corresponding change to use NAICS codes instead of SIC codes on the Tier I and Tier II forms themselves.

In addition to setting forth the uniform inventory forms and instructions, existing sections 370.40 and 370.41 reiterate many of the reporting requirements that are codified in other sections in the regulation. EPA doesn't believe it is necessary for these requirements to be stated twice within the same regulation, and the proposed Tier I and Tier II information sections (sections 370.41 and 370.42) don't reiterate requirements codified elsewhere in the regulation. EPA requests public comments on this proposed change.

The Tier I and Tier II instructions, which are in existing sections 370.40 and 370.41, contain some general explanatory information about the reporting requirements and some examples and suggestions to ease compliance. This instructional information is not included in the body of the proposed regulation, but would still be included with the forms and instructions that are readily available to the public. While EPA is proposing to remove this instructional information from the proposed regulation, the Tier I and Tier II information requirements in today's proposed rule are the same as the existing Tier I and Tier II information requirements (except for the two specific proposed changes described above). EPA requests public comments regarding removal of this instructional information.

Hazardous chemicals are classified into five hazard categories for purposes of reporting under EPCRA sections 311 and 312. These five categories are a

consolidation of the 23 hazard categories defined under OSHA, at 29 CFR 1910.1200. Sections 370.40 and 370.41 in the existing rule, which contain the Tier I and Tier II inventory forms and instructions, each contain a chart that compares EPA's hazard categories under EPCRA with OSHA's hazard categories. Although today's proposed rule does not include the Tier I and Tier II forms and instructions, the five EPCRA hazard categories are defined in proposed section 355.62 and the corresponding OSHA hazard categories are identified for each EPCRA hazard category.

Section 370.41 in the existing regulation, which contains the Tier II form and instructions, also sets forth the requirements pertaining to trade secret information and confidential location information for specific chemicals. These requirements aren't found elsewhere in the existing regulation. Section 370.64 in today's proposed rule contains the trade secret requirements and the requirements for confidential location information.

The instructions for the Tier II form (currently found in section 370.41) indicate the requirement to report the "chemical name or common name" for each chemical being reported. Section 370.42 in today's proposed rule, which contains the Tier II information requirements, indicates the requirement to report the "chemical name or common name of the chemical as *provided on the material safety data sheet*." EPA isn't proposing any change to this requirement, but rather reiterating the full requirement, consistent with the statutory language in EPCRA section 312(d)(2)(A).

The Tier I and Tier II forms that EPA publishes aren't the only formats that are acceptable for inventory reporting under the EPCRA program. The existing regulations (40 CFR 370.40 and 370.41) provide that the facility owner or operator may submit a State or local form that contains the identical content of the published uniform federal format (the Tier I or Tier II information). Such State or local forms are adequate for section 312 reporting of Tier I and Tier II information, provided the entities to whom the forms must be submitted receive the information by the reporting deadline. The proposed regulations specify the requirements for Tier I and II information (see proposed sections 370.41 and 370.42) and similarly provide that State or local formats for reporting may be used so long as they contain the required information. See proposed section 370.40(b). Many States have developed their own format for reporting, which often contains

additional requirements beyond what is required by the Tier I or Tier II forms. Electronic inventory forms are available from various sources, including the CEPPPO homepage and some States.

EPA believes that it is appropriate for the Tier I and Tier II forms to be published and readily available, but not to be published in the regulations. EPA is interested in comments concerning the removal of these forms from the body of the regulation, and suggestions about how the forms can be made readily available. EPA is especially interested in comments on whether the public actually uses the Code of Federal Regulations (CFR) as a source of the Tier I or Tier II forms, in which case it might be helpful to retain the forms and instructions in the regulations.

3. Penalties for Noncompliance

Sections 355.50 and 370.5 in the existing rules describe potential penalties for noncompliance with EPCRA's emergency release notification requirements and hazardous chemical reporting requirements, respectively. The Tier I and Tier II form instructions also describe potential penalties for noncompliance with the hazardous chemical reporting requirements. In today's rulemaking, EPA is proposing to remove these provisions from the body of the regulations because it is not necessary to repeat them in the regulations. The potential penalties for all EPCRA violations are established in the statute itself, which is self-implementing. The absence of the penalty discussions in the rule won't change any requirements with respect to enforcement. EPA seeks comment on whether this is a useful change to streamline the regulations.

4. Facility Identifier as a Tier I and Tier II Information Requirement

EPA is currently undertaking an agency-wide initiative to streamline and consolidate the Agency's collection and maintenance of environmental data. EPA, in cooperation with States, is seeking to establish information management procedures for the identification of facilities that are subject to Federal environmental reporting and permitting requirements. This initiative is 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 is known as the Facility Identification Initiative. Through this initiative, EPA intends to establish a standardized facility identification scheme, including 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 via computer telecommunications and other means. The aim is to enable facility-related environmental information in multiple databases to be easily linked. EPA, in cooperation with the States, is currently developing a non-regulatory process for assigning the Facility Identification Numbers. For the latest information regarding the Facility Identifiers Initiative, please see the memorandum "Announcing the Facility Identification Interim Data Standard" in the CERCLA Docket Office, in docket number 300RR-IF1 (for the address of the docket office, see the **ADDRESSES** section of this preamble).

In today's document, EPA is seeking public comment on whether or not to require facilities to report their Facility Identification Number when reporting under EPCRA section 312, if such number has been assigned under another State or Federal environmental program. This document does not contain proposed regulatory language establishing the Facility Identifier Number as part of the Tier I and Tier II information requirements. However, EPA wants to ensure that the public understands that based on this document and opportunity for public comment, EPA may, in the final rulemaking action on this proposal, revise the regulatory requirements for Tier I and Tier II information by adding regulatory language that requires submission of the Facility Identification Number. See existing sections 370.40 and 370.41, and proposed sections 370.41 and 370.42, for Tier I and Tier II information requirements generally. The Tier I and Tier II information regulations would also be revised to provide that only those facilities that are subject to other State and Federal environmental programs, and have been assigned a Facility Identification Number by their State or EPA, would need to submit such Number with their Tier I and Tier II information. The public is hereby informed that EPA may also take final action to include the Facility Identification Number as part of the Tier I and Tier II information requirements, separate from the final action on other aspects of this proposal. This could occur, for example, if EPA determines that the status of the Facility Identifiers Initiative warrants either more expeditious or later regulatory action. Finally, EPA could also

conclude, based on the public input from this document or other considerations, that it will not add Facility Identification Number to the Tier I and Tier II information requirements. All three of these outcomes may occur without providing opportunity for public comment beyond that provided in this document.

Information reported under EPCRA section 312 is submitted to SERCs, LEPCs and local fire departments; it is not reported directly to EPA. However, the Facility Identifiers Initiative is a cooperative data management effort between EPA and the States. States participating in the initiative would include the Facility Identification Numbers in their records, which may eventually be linked to EPA data. Although EPA does not maintain EPCRA section 312 data, EPA may be able to provide data users with links to State data systems. Having the Facility Identification Number present in the data that the SERCs, LEPCs and local fire departments receive from a facility under EPCRA section 312 may allow Federal, State and local governments as well as the public to coordinate that data with other State and Federal data maintained about the same facility. Persons viewing the Tier I or Tier II information for a facility would then know whether the facility is subject to other environmental laws in addition to EPCRA, and would have a link to find additional information about that facility.

EPA seeks comment on whether it would be useful to require that facilities provide their Facility Identification Number, if assigned, when reporting Tier I or Tier II information under EPCRA section 312. EPA would like to know if SERCs, LEPCs, local fire departments and the public would benefit by the Identification Numbers being reported under section 312.

5. Additional Changes to the Parts 355 and 370 Regulations

In today's rule EPA is proposing some changes to the regulations at 40 CFR parts 355 and 370 that are intended to make the rules clearer and easier to use. While rewriting these regulations, EPA took the opportunity to "clean-up" the rules—by clarifying requirements, codifying policy, and in some cases restating statutory language. The proposed regulatory revisions are as follows:

- SERC and LEPC instead of commission and committee. In today's proposed rule, SERC and LEPC are used to abbreviate State emergency response commission and local emergency response committee, respectively.

Commission and committee (rather than SERC and LEPC) have been used as abbreviations in the existing rule, but EPA believes that the public is generally more familiar with the terms SERC and LEPC. The definitions for key words used in parts 355 and 370, which are found in section 355.62 in today's proposed rule, reflect the use of the terms SERC and LEPC instead of commission and committee.

- Quantity of an extremely hazardous substance in a mixture. Instructions for calculating the quantity of an extremely hazardous substance (EHS) present in a mixture, for purposes of emergency planning, are in section 355.30(e)(1) of the existing regulation. The terms "mixture" and "solution" are both used in these instructions. In the proposed regulation the term "solution" has been removed because "mixture" includes "solution," so it is redundant to use both terms. The term "mass" in the existing instructions is replaced by "weight" in the proposed instructions. For the purposes of this regulation the two terms are synonymous, and "weight" is a more familiar term to the general public. Further, in order to improve the understanding of these instructions, an example is provided in the proposed instructions, which are in section 355.13 of today's proposed rule.

- Extremely hazardous substances in solid form. Instructions for determining which threshold planning quantity (TPQ) to use for extremely hazardous substances (EHSs) in solid form are in section 355.30(e)(2)(i) of the existing regulation. In that section solids are described as "existing in" or "being handled in" various forms. In the proposed rule, the phrases "exists in" and "is handled in" have been replaced by "is in." This is simpler and easier to understand, but doesn't affect the requirements in any way. These instructions are in section 355.15 of today's proposed rule.

- Facility emergency coordinator.
 - Section 355.30(c) in the existing regulation requires the owner or operator of a facility to notify the LEPC (or the Governor if there is no LEPC) of the facility emergency coordinator. In today's proposed rule, section 355.20 requires this notification be made to the SERC if there is no LEPC, or to the Governor if there is no SERC. EPA believes that most States have functioning SERCs now, and this notification should be given to the SERC rather than the Governor, if there is no LEPC.
 - The existing rule requires that this notification be made on or before September 17, 1987, or 30 days after

establishment of an LEPC, whichever is earlier. The notification deadlines in the existing rule correspond to the statutory deadlines found in EPCRA section 303(d)(1). Neither the statute nor the current regulation establish a deadline for providing this notice in the case of a facility that later 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). EPCRA section 302(c) does, however, require that, within 60 days after becoming subject to the emergency planning requirements, a facility provide notice that it is subject to such requirements. EPA believes that notice 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, section 355.20 in today's proposed rule requires that notice of the facility emergency coordinator be provided by September 17, 1987, or within 30 days of establishment of the LEPC (in accordance with the statutory deadlines 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 proposed rule, the deadlines for a facility to provide notice of its facility emergency coordinator are consistent with the deadlines for a facility to provide notice that it is subject to the emergency planning requirements (see proposed section 355.20). (The deadlines for notification that a facility is subject to the emergency planning requirements are discussed further below.) Proposed section 355.20 presents a summary, in table format, of the information that is required under EPCRA's emergency planning requirements; including types of information to be reported, required recipients of information, and deadlines for reporting. The proposed table is intended to present the requirements in a clear, easy to understand format.

- Emergency planning notification.
 - Section 355.30(b) in the existing regulation requires notification to the SERC that a facility is subject to the emergency planning requirements under EPCRA. In today's proposed rule, section 355.20 requires this notification be provided to both the SERC and the LEPC. This is consistent

with section 302(c) of EPCRA, which provides for owners or operators to notify the SERC and LEPC when their facility becomes subject to the emergency planning requirements.

—Section 355.30(b) in the existing regulation requires that notification be provided on or before May 17, 1987 or within 60 days after a facility first becomes subject to the requirements. The notification deadlines in the existing regulation correspond to the statutory deadlines at EPCRA section 302(c). Section 355.20 in today's proposed rule requires that emergency planning notification be provided by May 17, 1987 or within 60 days after a facility first becomes subject to the requirements (in accordance with the statutory deadlines at EPCRA section 302(c)) or within 30 days after establishment of an LEPC. EPA is proposing to add "within 30 days after establishment of an LEPC" in section 355.20 of today's proposed rule to provide for consistency with the statutory requirement at EPCRA section 303(d)(1) to provide notice of the facility emergency coordinator within 30 days of establishment of an LEPC. EPA believes that notification that a facility is subject to EPCRA's emergency planning requirements, and notification of a facility's emergency coordinator, which are the two basic components of emergency planning notification, should be provided according to consistent reporting deadlines. EPA does not believe that it is reasonable to require a facility to provide notice of the facility emergency coordinator in advance of the deadline for providing notice that they are, in fact, subject to EPCRA's emergency planning requirements. (The deadlines for providing notification of the facility emergency coordinator are discussed in detail above.) EPA seeks, in today's document, to provide for consistency between these two basic components of EPCRA's emergency planning requirements.

- Changes relevant to emergency planning. Section 355.30(d) in the current regulation requires that facility owners or operators inform the LEPC of any changes occurring at the facility which may be relevant to emergency planning. The table in proposed section 355.20 in today's rule contains this same requirement, and also indicates that the information be provided promptly—EPA is proposing to add "promptly" to be consistent with EPCRA section 303(d)(2).

- Format for notifications. In today's proposed rule, EPA has added sections

that discuss the format to be used for emergency planning and emergency release notification (sections 355.21 and 355.41, respectively). EPA is not intending to change the existing requirements for format of notifications, or to impose new requirements. Sections 355.21 and 355.41 are intended simply to clarify the existing requirements. Although the current regulation does not state the required format for emergency planning notification, it long has been EPA policy to recommend that the emergency planning notification be made in writing. In the preamble to the final rule establishing the emergency planning requirements (52 FR 13379, April 22, 1987), EPA stated that, "Any facility where an extremely hazardous substance is present in an amount in excess of the threshold planning quantity is required to notify the State commission * * * *Such notification should be in writing* * * *" (emphasis added). Proposed section 355.21 in today's rule is intended to reflect EPA's policy of recommending (but not requiring) written emergency planning notification.

- 24-hour time period for release. The emergency release notification requirements in the existing regulation, found in section 355.40, don't indicate over what time period 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). Thus, EPA's interpretation has been that the 24-hour policy applicable under CERCLA also applies under EPCRA. This interpretation, which long has been EPA policy, is being codified in today's proposed rule. Accordingly, section 355.33 in this proposed rule indicates that the "release of a reportable quantity * * * within any 24-hour period" triggers emergency release notification requirements.

- Releases during transportation. The emergency release notification requirements that apply to release of a substance during transportation (or storage incident to transportation) are in section 355.40(b)(4)(ii) in the existing regulation. The term "transportation-related release" is used in that section, and is also defined there. Section 304(b)(1) of EPCRA, which provides the statutory requirements for releases during transportation or storage incident to transportation, doesn't use the term "transportation-related release." In today's proposed rule, the requirements for releases during transportation or

storage incident to transportation are in section 355.42(b). In that section the term "transportation-related release," and its definition, have been removed because EPA believes that the use of that term adds to the confusion about these requirements. In addition, the language of that section has been modified to generally track the statutory language in EPCRA 304(b)(1). EPA requests comments as to whether additional guidance should be provided concerning notification of releases during transportation (or storage incident to transportation). EPA also requests suggestions as to what type of additional guidance would be helpful.

- Releases that are continuous. A release that is continuous and stable in quantity and rate, under the definitions in 40 CFR 302.8(b), qualifies for reduced reporting requirements under EPCRA. The requirements for reporting continuous releases are in section 355.40(a)(2)(iii) in the current regulation, and in section 355.32 in today's proposed regulation. Continuous releases are subject to four specific reporting requirements. These requirements have been reorganized in today's proposed rule, to clarify that each of the four notifications must be made 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 (in addition to the notifications required under 40 CFR 302.8). The Agency stated that these four notifications are to be made to the SERC and the LEPC (in addition to the NRC) in the final rule establishing the requirements for reporting continuous releases of hazardous substances published on July 24, 1990 (55 FR 30179).

- State or local format for reporting inventory information.

—One of the purposes of today's proposal is to insure that SERCs and LEPCs have flexibility with respect to the manner in which information is reported under EPCRA sections 311 and 312. Sections 370.40 and 370.41 in EPA's existing rule allow for flexibility by providing that a State or local form may be used for reporting inventory information, as long as the State or local form contains identical content to the uniform federal forms (Tier I of Tier II forms). To further clarify this flexibility, EPA proposes today to revise those provisions such that the use of a State or local *format* is allowed (see proposed section 370.40). These proposed revisions would clearly encompass submittal of inventory information in any number

or potential manners, including electronic submittal, so long as all information required under the statute and its implementing regulations were provided.

—Section 370.43 in today's proposed rule provides weight range codes, and codes for storage types and conditions, that are used when reporting Tier I and Tier II information (the same codes are in sections 370.40 and 370.41 in the current regulation). These codes must be used when reporting inventory information using the federal Tier I and Tier II forms. However, when State or local formats are used for reporting Tier I and Tier II information (as discussed above), EPA allows the use of State or local codes for weight ranges and storage types and conditions. State or local codes may be used for reporting weight ranges, provided that the weight ranges are no broader than those in proposed section 370.43. State or local codes may be used for reporting storage types and conditions, provided that the codes specify the same or more detailed information as that specified in proposed section 370.43. Paragraph (d) in proposed section 370.43 has been added to clarify this flexibility regarding the use of EPA's codes. For example, a State or local government might choose to specify ranges in gallons instead of in pounds—such ranges may be used when reporting amounts, provided that weight ranges corresponding to the given ranges in gallons are not broader than the ranges in proposed section 370.43 (and provided that a format other than the federal Tier I or Tier II forms are used).

- **SERC or LEPC response to a request for Tier II information within 45 days.** Section 370.61 in today's proposed rule states that "A SERC or LEPC must respond to a request for Tier II information * * * within 45 days of receiving such a request." This requirement isn't found in the existing regulation. However, this requirement is specified under EPCRA section 312(e)(3)(D), and EPA is proposing to codify the statutory requirement at this time for clarity. Codifying this requirement will not create any new substantive requirement, since it was already provided by the statute.

EPA requests public comment on all aspects of the proposed regulatory revisions described above.

6. Definitions

In today's proposed rulemaking, the definitions for parts 355 and 370 (that

currently are found in sections 355.20 and 370.2, respectively) have been combined into one section and placed at the end of part 355. See proposed section 355.62. This was done because parts 355 and 370 are closely related and are published together, and the defined words used in both parts are generally the same.

Placing the consolidated definitions section at the end of part 355 relieves the reader of having to read through all of the definitions before seeing how they are used in the text. A short statement at the beginning of each part in today's proposed rule tells the reader where to find the definitions. Words that are defined in the consolidated definitions section are printed with the initial letter capitalized the first time they are used in each part, to highlight them. EPA is seeking comments concerning whether or not these changes improve the readability of the rule.

Some minor revisions to the contents of the definitions are proposed in today's rulemaking. EPA intends these changes to make the definitions clearer and easier to use. Some of these changes were necessary to consolidate the two existing definitions sections into one section. EPA requests public comment on the proposed changes to the definitions, which are as follows:

- **Act.** The term "act" is defined in the existing definition section for part 355 as "the Superfund Amendments and Reauthorization Act of 1986." This definition has been removed from the proposed definitions section, which applies to both parts 355 and 370. The Emergency Planning and Community-To-Know Act (EPCRA), the Occupational Safety and Health Act (OSHA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Clean Air Act (CAA) are each referenced in today's proposed rule. The term "act" is not used in today's rule without the name of the "act" it is referencing, so it is unnecessary to give it a specific meaning.

- **SERC and LEPC.** As discussed above, the terms "commission" and "committee" have been replaced with "SERC" and "LEPC," respectively, throughout today's proposed rule. Accordingly, the terms "commission" and "committee" have been replaced with "SERC" and "LEPC" in the proposed definitions section, which is section 355.62 in today's rule. No changes are proposed to the definitions themselves in today's rule, the terms "commission" and "committee" have simply been replaced by "SERC" and "LEPC."

- **EPCRA and OSHA.** Definitions of "EPCRA" and "OSHA" have been added in the consolidated definitions section proposed in today's rulemaking. These acronyms frequently are used throughout the rule. Placing them in the definitions section should make it easier for the reader to find their meanings.

- **Facility.** The term "facility" is defined in both parts 355 and 370 in the existing rule. The two definitions are identical, except that in part 370 the definition of "facility" includes "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." EPA intends for the definition of "facility" under part 355 to be identical to the definition under part 370 (see 55 FR 30634, July 26, 1990; and 54 FR 12999, March 29, 1989). This is being clarified in today's proposed rulemaking by including "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 the definition of "facility" under the consolidated definitions section (see proposed section 355.62).

- **Hazardous substances.** The term "CERCLA hazardous substance" is defined in the existing definitions for part 355, but not in the definitions for part 370. This term is defined in the proposed combined definitions section. The terms have been reorganized such that "CERCLA hazardous substance" and "extremely hazardous substance" appear together under the heading "hazardous substances." EPA believes that putting the definitions of the two terms together under a common heading will help clarify the difference between these closely related terms. In addition, these terms now appear immediately after the definition of "hazardous chemical," which is the third category of substances regulated by today's rulemaking. Placing together the definitions of each of the categories of substances that this rule regulates should help the reader to compare and understand their meanings.

- **Hazardous chemical.** No change is proposed to the meaning of the term "hazardous chemical." However, two organizational changes are proposed that should improve the clarity of the definition. The first is that the list of exceptions to the term has been reformatted. The second involves the definition of the phrase "present in the same form and concentration as a product packaged for distribution and use by the general public," which is used within the definition of "hazardous chemical" (in the list of

exceptions to the term). This phrase is defined in the existing definitions section for part 370, in a separate paragraph from the definition of "hazardous chemical." In the consolidated definitions section in today's rulemaking (proposed section 355.62), the definition of this phrase has been relocated to appear within the definition of "hazardous chemical." The list of exceptions to the definition of "hazardous chemical" is reiterated in section 370.13 in today's proposed rule, and the definition of "present in the same form and concentration as a product packaged for distribution and use by the general public" is placed within that list.

- *Inventory form.* The Tier I and Tier II "inventory forms" have been removed from the regulation, as discussed above. The definition of "inventory form" has been modified to reflect that, under the proposed rule, the Tier I and Tier II forms no longer are set forth in part 370.

- *Mixture.* In the existing rule, the term "mixture" is defined in part 355 but not in part 370, although the term is used in both parts. In today's proposed rulemaking, "mixture" is defined in the consolidated definitions section. For the purposes of part 355, the proposed meaning of "mixture" is the same as the existing meaning, except that the existing definition includes the term "compounds" and the proposed definition does not. EPA believes that this term shouldn't be included—in a "compound" the various constituents don't retain their individual identities, so a "compound" shouldn't be treated as a mixture for the purposes of part 355. For the purposes of part 370, the proposed definition of "mixture" is "mixture" as defined under 29 CFR 1910.1200(c). Applicability for the part 370 requirements is based on OSHA's hazard communication standard (29 CFR 1910.1200), and today EPA is proposing this regulatory revision to clarify the Agency's policy that the definition of "mixture" at 29 CFR 1910.1200(c) applies to 40 CFR part 370.

- *Reportable quantity.* In section 355.20 in the current regulation, "reportable quantity" means, "for any CERCLA hazardous substance, the reportable quantity established in Table 302.4 of 40 CFR part 302, for such substance, for any other substance, the reportable quantity is one pound." In section 355.62 in today's proposed rule, however, "reportable quantity" is defined as, "for any CERCLA hazardous substance, the reportable quantity established in Table 302.4 of 40 CFR part 302, for such substance. For any extremely hazardous substance, reportable quantity means the reportable

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." EPA seeks to make clear that the phrase "any other substance" in the current definition refers only to EHSs (that are not also CERCLA hazardous substances). "Reportable quantities" currently have been established by EPA for all EHSs, so the proposed definition directs the reader to appendices A and B of part 355, where the "reportable quantities" are published. The language, "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" has been added to clarify that the statutory default reportable quantity is one pound for EHSs and CERCLA hazardous substances (see EPCRA section 304(a) and CERCLA section 102(b), respectively).

- *Threshold planning quantity.* The definition of "threshold planning quantity (TPQ)" has been changed to make it clear where in the existing regulations the TPQs are found, in order to avoid any confusion that may arise due to the consolidation of the definitions for parts 355 and 370.

- *Tribe.* The term "Tribe" was placed together with the definition of "Indian Tribe," because these terms have the same meaning in the regulation and the term "Tribe" isn't defined in the existing rule.

V. What Draft Guidance Is EPA Publishing in This Preamble?

The discussion below addresses a number of issues for which EPA is considering providing guidance, to facilitate understanding and flexibility in complying with the existing regulatory requirements. Although the draft guidance explored below does not involve any revision to the existing regulatory requirements, EPA seeks public comment in developing this guidance.

A. Increased Flexibility for States and Local Governments With Respect to Reporting Under EPCRA Sections 311 and 312

In order to streamline compliance with the existing regulatory requirements, EPA is developing guidance discussing certain reporting options that SERCs, LEPCs and fire departments may wish to consider in implementing EPCRA sections 311 and 312. This effort is part of the President's

program for reinventing government and reforming regulatory policy. Several different options under sections 311 and 312 are discussed below. EPA does not believe any of these options would entail regulatory changes. EPA's intention is to generate discussion of different options at this time. While EPA's objective is to identify opportunities for flexibility in implementing EPCRA sections 311 and 312, SERCs, LEPCs, fire departments, and facility owners and operators would not have to follow any of the draft options. Further, SERCs and LEPCs could implement the options discussed in section A(1), (2), (3) and (4) regardless of whether EPA issues final guidance, provided the implementation of the option meets the statutory and regulatory requirements.

Numerous stakeholders have asked EPA to provide greater flexibility with respect to reporting under section 312 of EPCRA, in order to facilitate their use of the reporting information. EPA agrees that enhanced flexibility would allow SERCs and LEPCs greater discretion in implementing the EPCRA program; however, an increase in flexibility may compromise the existing national consistency within the EPCRA program. Also, if the EPCRA programs become less consistent nationally, Federal guidance may become obsolete. This could increase the burden on State and local entities to provide guidance to their regulated community. EPA is also concerned that increased State and local flexibility may compromise Federal, State and local compliance efforts. EPA is presenting several options that would clarify State and local flexibility with respect to reporting under sections 311 and 312, and is seeking public comment on those options. EPA is especially interested in comments from SERCs, LEPCs and local fire departments, and will consider all public comments in developing this guidance under the EPCRA program.

Section 311 of EPCRA requires facilities to submit MSDSs (or a list of hazardous chemicals subject to the requirements) to the SERC, the LEPC, and the fire department with jurisdiction over the facility. Likewise, section 312 requires facilities to submit an emergency and hazardous chemical inventory form (containing at a minimum the Tier I information) by March 1 of every year to the same three entities. Sections 370.40 and 370.41 in the existing rule allow facilities to use State and local forms instead of the federal forms, provided the State or local form contains the information required by the statute and its implementing regulations. In today's

proposed rule, section 370.40 similarly provides that a State or local format may be used if the State or local format contains at least the Tier I information.

Throughout the implementation of EPCRA, States have suggested alternatives to the federal reporting format. EPA has considered these suggestions, and is presenting suggested alternatives below for public comment. Every SERC, LEPC and fire department would have the choice of adopting any, or none, of the alternatives explored below—EPA would not require the adoption of any of these options. EPA would like to provide flexibility in implementing EPCRA sections 311 and 312, provided that the statutory and regulatory standards regarding information reported (at a minimum the Tier I information), recipients of information (the SERC, the LEPC, and local fire department), and timing of submission (March 1 annually under section 312, and within 3 months after becoming subject under section 311), are met. EPA believes it is important for the SERC, the LEPC, and the local fire department to have the information provided under sections 311 and 312 and the implementing regulations, at the required time. Each entity has a unique use and need for this information. EPA seeks comments on the following alternatives for reporting under sections 311 and 312 of EPCRA.

1. UST Forms to Fulfill the Requirements for Tier I Information Under EPCRA Section 312

EPA is aware that many facilities that are subject to the underground storage tank (UST) regulations under section 9002 of RCRA are also subject to the reporting requirements under EPCRA sections 311 and 312. Some, but not all, of the reporting information that is currently required under section 312 of EPCRA and under the Federal UST program, is duplicative. In keeping with EPA's efforts to provide flexibility with respect to meeting the reporting requirements, EPA is considering developing guidance which would clarify that States, if they so choose, have the option to allow the UST form required under RCRA to be used to comply with the reporting requirements under section 312 of EPCRA, provided that all of the statutory and regulatory reporting requirements under section 312 are met. The statutory and regulatory reporting requirements are discussed in detail below.

EPCRA section 312 requires submission of an inventory form containing, at a minimum, Tier I information, and also requires that the EPA publish a uniform format for

inventory forms. However, neither the statute nor the implementing regulations require that the uniform federal format be used for submission of information under section 312. Sections 370.40 and 370.41 in the existing rule provide that a State or local form that includes content identical to that of the Tier I or Tier II forms, respectively, may be used instead of the Tier I or Tier II forms. It long has been EPA policy that alternative State and local formats are acceptable for reporting under section 312. Today, EPA is proposing to remove the forms themselves from the regulation, as discussed above, in part IV.B.2. of this document.

Some States have suggested to EPA that the UST form and submittal procedures under their State UST programs are similar to the EPCRA section 312 reporting requirements, and have asked for guidance on whether their State UST form could fulfill the requirements under EPCRA section 312. By clarifying the conditions under which a single form (or forms) would fulfill the reporting requirements under a UST program and under EPCRA section 312 and its implementing regulations, EPA intends to provide States with flexibility in implementing the EPCRA program and also seeks to reduce the reporting burden on regulated facilities, while preserving the goals of the two programs. The issue of using UST forms to substitute for the Tier I information was also addressed in a December 27, 1988 **Federal Register** Request for Comments (53 FR 52273).

In order for the UST form to address section 312 of EPCRA, all of the statutory and regulatory reporting requirements under section 312 must be met. The statute and regulations contain requirements for the information reported, the recipients of the information, and the timing of the submission. A comparison of those requirements with the Federal UST program follows:

- **Information Reported:** Tier I information is the minimum information required under EPCRA section 312 and the implementing regulations. In addition, Tier II information must be reported upon request. Note that some States or LEPCs require more than the minimum data that EPA requires. In order for the UST form to meet the routine reporting requirements under EPCRA section 312, it must contain at least the information required for the Tier I information.
- **Recipients of Information:** EPCRA section 312 requires that the reporting information be submitted to the SERC, the LEPC, and the fire department with jurisdiction over the facility. The UST

program under RCRA requires that the UST forms be submitted to a State agency. However, that State agency is not necessarily the SERC. If the UST forms are to meet section 312 of EPCRA, then the SERC, the LEPC, and the fire department must all receive the information.

- **Timing of Reporting:** Under EPCRA section 312 and the implementing regulations, the owner or operator of a regulated facility must submit the required Tier I reporting information by March 1 of the first year after the facility first becomes subject to reporting, and by March 1 of each year afterwards (see EPCRA section 312(a)(2), and 40 CFR 370.20(b)(2) and 370.25(a)). In addition, the owner or operator of a regulated facility must submit Tier II information within 30 days of the receipt of such a request from the SERC, the LEPC, or the fire department having jurisdiction over the facility (see EPCRA section 312(e)(1) and 40 CFR 370.25(c)). In contrast, the UST program requires a one-time notification, not an annual notification. If the UST forms are to meet section 312 of EPCRA, then they must contain Tier I information and must be submitted annually by March 1, as required under EPCRA. Additionally, the owner or operator would continue to be subject to the requirement to submit Tier II information upon request.

The reporting requirements under the Federal UST program differ from reporting requirements under EPCRA section 312 in terms of content, recipients, and timing of submission. In order for the UST form to fulfill the reporting requirements under EPCRA section 312, all of the requirements for content, recipients and timing described above must be met. If a facility submits its UST form in such a manner that each of these requirements is met, EPA would consider that facility to be in compliance with section 312 of EPCRA.

If an UST form is submitted to fulfill EPCRA section 312 requirements, under the conditions examined here, it might be advisable to indicate on that form that it is being submitted for EPCRA section 312, so that the receiving entity will know why the UST form was submitted. In addition, it is conceivable that a facility may submit UST forms, as well as other inventory forms, together in one section 312 submission. In such a case, it may be advisable to indicate on both sets of forms the total number of pages in the submission, and that some of the information is reported on UST forms and some on other inventory forms, to avoid any confusion for the receiving entity.

EPA requests comments on the draft guidance provided above, and on any

other issues or concerns regarding the use of UST forms to fulfill reporting requirements under EPCRA section 312.

2. Partnership Programs for Joint Access to Information and Streamlined Submission of EPCRA Sections 311 and 312 Reporting

Sections 311(a)(1) and 312(a)(1) of EPCRA require the owner or operator of covered facilities to submit an MSDS (or list of hazardous chemicals) and Tier I inventory information. There are two key requirements associated with the reporting of this information. First, the information must be submitted to the following three entities: the SERC, the appropriate LEPC, and the fire department with jurisdiction over the facility. Second, there are specific compliance deadlines governing submission of the information to the three entities. The basic requirement to submit the EPCRA sections 311 and 312 information to the SERC, the LEPC and fire department by specific deadlines is implemented in 40 CFR sections 370.21 and 370.25 of the existing regulations, and is proposed in today's document at sections 370.32, 370.33, 370.40, 370.44 and 370.45 without substantive revision.

EPA is interested in exploring how the statutory and regulatory requirements to submit the MSDS and Tier I information to all three entities, by the required deadlines, could be streamlined to reduce the reporting burden on regulated facilities. Specifically, EPA is exploring the conditions under which the SERC, LEPCs and fire departments could establish partnerships for joint receipt of EPCRA information. Under such partnerships, a submission timely reported under EPCRA sections 311 or 312 to a central database that the SERC, the LEPC and fire department have unrestricted access to, could jointly be received by all three entities. In other words, timely submission to the joint database could constitute timely submission to all three entities in accordance with the statute and regulations. In the discussion below, EPA examines a number of issues involved in developing this guidance. EPA seeks public input on all of these issues, to help design guidance to facilitate streamlined submission of EPCRA information.

A critical consideration in designing any guidance on streamlined submittal is to ensure that emergency response officials, State and local officials, and other members of the community continue to have timely access to information reported under EPCRA sections 311 and 312. As discussed, to

be in compliance with EPCRA, covered facilities need to submit the required information by specific statutory and regulatory deadlines. For example, the reporting for EPCRA section 312 Tier I information is due each year by March 1st, to cover hazardous chemicals present at the facility the preceding calendar year. See EPCRA section 312(a)(2). Thus, any partnership program for joint access to information would need to ensure that the SERC, the LEPC and the fire department receive Tier I information by March 1st. As noted, under the partnership program concept, this could be accomplished by timely submittal to a central database that all three entities have unrestricted access to and thereby jointly receive. The critical point is that the goal of the streamlined submittal policy is to reduce the reporting burden on regulated facilities without diminishing timely and full access to reported information.

A potential example of streamlined submission is a joint electronic database. If, for example, covered facilities submitted the information required under EPCRA sections 311 and 312 to a joint electronic database to which the SERC, the LEPC and the fire department each have unrestricted access, then timely submittal to the single electronic database could constitute timely submittal to all three entities. The obvious advantage of the electronic database example is that the regulated community could provide the required information to all three entities through a single streamlined submission. This could reduce the reporting burden on the regulated community. EPA is interested in other examples of systems through which a single submittal of EPCRA information could similarly be jointly received by the SERC, the LEPC and the fire department.

In part V.A.3 of this document (immediately below), EPA explores the development of guidance on optional electronic submittal of information required under EPCRA sections 311 and 312 and the implementing regulations. If EPA establishes guidance for streamlined submittal that relies on the use of a central electronic database for joint receipt of EPCRA information, as suggested above, EPA would build on the guidance for electronic submittal of EPCRA information discussed in part V.A.3 of this document.

EPA notes that information partnerships could be structured to reduce the overall information management burden on SERCs, LEPCs and fire departments. By joining together to collectively access the

EPCRA information reported under sections 311 and 312, SERCs, LEPCs and fire departments could conserve resources through economies of scale. For instance, in the electronic submittal example, a single electronic database would be more efficient than three separate databases. Thus, the initial effort to establish partnership programs for joint access to information could be offset by the resources saved from more efficient program administration.

Regardless, EPA does not wish to create burden for the State and local entities implementing EPCRA. Thus, an important principle of the streamlined submittal guidance under development is that participation by SERCs, LEPCs and fire departments would be entirely voluntary. SERCs, LEPCs and fire departments would decide on their own accord whether establishing partnership programs for joint access to information is a sensible option for them.

To promote flexibility in the establishment of partnership programs, EPA also wishes to explore how a variety of different partnerships could be created based on the interests and capabilities of the SERC, the LEPCs and the fire departments in any given State. Partnerships could range from statewide to more limited partnerships as SERCs, LEPCs and fire departments see fit. For example, a SERC could form partnerships with all of the LEPCs and fire departments in the State managing EPCRA information. If the SERC, the LEPCs and fire departments had unrestricted access to a statewide electronic database, then for any facility in the State, timely submission to the central electronic database could constitute timely submission to each entity under EPCRA.

Such a statewide EPCRA database could have several benefits in addition to reducing the reporting burden for the regulated community. For example, compilation of the information in a single database, such as a statewide web site accessible from the Internet, could provide greatly expanded public access to EPCRA information, advancing the fundamental purpose of EPCRA—community right-to-know. Further, if the public has ready access to the information, there may be fewer requests from the public for information, which could result in a decrease in the overall administrative burden to process such requests. EPA also recognizes that there may be technical information management issues to explore further. EPA seeks comment about how broad partnerships, such as statewide electronic databases, could best be implemented.

In addition, EPA seeks input on the establishment of more limited partnership programs for joint access to information. As an alternative to a statewide database, limited partnerships might include two of the three entities to which EPCRA information must be submitted. Such partnerships would still reduce the reporting burden for the regulated community. For example, the fire departments in a State that wishes to establish a partnership may not presently have adequate tools to access a central electronic database. A SERC and LEPC may nevertheless choose to establish a limited partnership so that timely submission to their joint database would constitute timely submission to both the SERC and the LEPC. In this example, EPCRA would still require a covered facility to make a separate submittal to the appropriate fire department, but the reporting burden on the regulated community would still be reduced. In a similar manner, limited partnerships could be formed between the LEPCs and fire departments or the SERC and fire departments. Under any such scenario, EPCRA would require a separate submission to the entity not included in the partnership.

EPA seeks public input on how partnerships, whether broad or limited, should be established by the partners. For example, EPA is contemplating whether it should encourage SERCs, LEPCs and fire departments to spell out partnerships through a Memorandum of Understanding (MOU) or other written document. There are several reasons to establish a partnership through a written document. First, a written document describing the partnership will help delineate clearly relative roles and responsibilities of the participating partners, ensure that all partners participate willingly, and provide continuity when there are changes in personnel. Further, a written document will help ensure that the regulated community is aware of the governmental partnership and, by making the partnership better known, will help maximize the benefits of reducing the EPCRA reporting burden. Additionally, formal delineation of partnerships will help ensure that the community knows and understands how the information is handled, promoting community involvement in the program. EPA seeks public comment on whether the partnerships should be formally delineated through MOUs or other written documents. EPA also seeks public input on whether, once formed, it makes sense to notify the regulated community and the public so

that they are aware of, and can put to use, the streamlined submittal option.

EPA would like to maintain reporting flexibility under this draft guidance. State and local partnerships for streamlined submission of information under EPCRA sections 311 and 312 should be structured to allow facilities the option of submitting the information separately to all three entities (SERC, LEPC and local fire department), instead of submitting it to the joint database (or other appropriate system for joint access to information). Some regulated facilities may not have adequate electronic tools to submit information to an electronic database or may have other concerns with the streamlined submittal approach. The objective is to reduce the reporting burden on the regulated community. Therefore, if a facility owner or operator decided that, on balance, it is more sensible to submit separately instead of jointly to all three entities, EPA would not want that reporting option to be eliminated. Further, the SERC, the LEPC and the local fire department would still have the option to receive Tier II information separately from the facility by requesting it (see section 370.10(b) in today's proposed regulation).

To summarize, the proposed core elements of the draft streamlined submittal guidance are as follows:

- *Voluntary Participation.* SERCs, LEPCs and fire departments would voluntarily decide whether they wish to form partnership programs for joint access to EPCRA sections 311 and 312 information, based upon their own programmatic priorities.

- *Flexible Participation.* Partnership programs for joint access to information could include a range of potential partnerships; from SERC and LEPC, or LEPC and fire departments for a particular emergency planning district, to statewide partnerships that include the SERC, and all LEPCs and fire departments.

- *Information Management Systems that Streamline Reporting and Maintain Community Access.* Whatever the scope of the partnership, it should involve a system that allows for a single streamlined submission of EPCRA MSDS and Tier I information, that must be jointly and timely received by all members of the partnership, and that provides all partners unrestricted access to the EPCRA information (although a separate submission would need be made to an entity not included in the partnership). An example is submission of EPCRA information, by the compliance deadlines, to a joint, centralized electronic database that all partners can access without restriction.

(Under EPCRA, the owner or operator of a covered facility would have to make a separate submission to any SERC, LEPC or fire department not included in the partnership.)

- *Written Formation and Public Notice of Partnership Programs for Joint Access to Information.* EPA believes there are clear advantages for the formation of partnership programs through a written instrument that describes relative roles and responsibilities under the partnership. The formation of a partnership should be announced to the public to promote awareness by regulated facilities and the affected community.

Because EPA's draft guidance addresses reporting under EPCRA, EPA is designing it to conform to the Federal requirements only. The draft guidance does not address any additional State or local reporting requirements. However, if desired, State and local officials could incorporate or expand partnerships to address additional State or local requirements. For example, where State law requires the routine submittal of Tier II information (instead of Tier I information) to all three entities, the partnership program could be designed to encompass Tier II information. In this particular example, the annual submittal of Tier II information could satisfy the EPCRA requirement for annual submittal of Tier I information, in addition to addressing State and local requirements, so long as the Tier II information is timely received by the SERC, the LEPC and fire department.

EPA seeks public input on a number of issues related to this draft guidance, including the following:

- Whether SERCs, LEPCs and fire departments would be interested in forming partnership programs for joint access to information; whether these entities currently have the tools to form such partnerships; what implementation obstacles are anticipated; and how EPA could reduce any administrative burden associated with developing and implementing such partnerships. EPA would also like to know whether any State is interested in piloting a partnership program, to promote streamlined submission of EPCRA information.

- Whether the proposed core elements of the guidance are sensible. Also, whether EPA has overlooked any specific concerns, and any suggestions on ways the draft guidance should be revised.

- How the draft streamlined submittal guidance described here should be implemented in conjunction with the guidance for electronic submittal of EPCRA sections 311 and 312

information (see part V.A.3 in this document), and what potential obstacles are presented by the use of electronic means to streamline submittal of information.

- EPA understands that some SERCs, LEPCs and fire departments are currently using electronic means to obtain and store reporting data that is required under EPCRA sections 311 and 312 and the implementing regulations. EPA is interested in comments concerning the various software programs used, and any pitfalls encountered. EPA is interested in how State and local experience might inform EPA's guidance.

- What other information systems, in addition to electronic databases, could be established through which a submission to a central database could be timely and jointly received by the SERC, the LEPC and fire department.

- Whether the partnership programs for joint access to information should be formed through an MOU or other written document. Also, how EPA could minimize the burden on SERCs, LEPCs and fire departments of developing MOUs. If MOUs or other written documents are not used to establish partnerships, how should partnerships be created?

- As discussed above, EPA suggests that partnerships may vary in scope—that is, a partnership could be between a SERC and LEPC for a single emergency planning district, or might encompass a statewide database. EPA seeks comment on whether the Agency should in any way restrict participation in partnerships.

- What technical database management issues are raised by the draft guidance, and how could such issues be addressed?

In addition, EPA seeks public input on any other suggestions and concerns regarding the draft guidance.

3. Electronic Submittal for EPCRA Sections 311 and 312 Reporting

EPA is considering the development of guidance on electronic submittal to satisfy sections 311 and 312 reporting. As noted, EPA's existing regulations give State and locals broad discretion to determine the reporting format for section 312 information. Likewise, under EPA's draft guidance on electronic submittal, States would continue to be able to develop their own format for electronically submitted section 312 reporting data, as long as the information includes the information required by the statute and its implementing regulations. Tier I information is the minimum information required under EPCRA

section 312 and the regulations. Tier II information, which is more detailed, is required under some State laws and must be provided upon request under EPCRA. EPA's regulations require section 312 reporting information to be certified by the facility owner or operator, or an official designated representative, as to its accuracy and completeness. This requirement applies to section 312 reporting information regardless of the format in which it is submitted, and would apply to electronic submittal. Section 311 and the implementing regulations require submission of an MSDS or a list of hazardous chemicals. If an electronic MSDS is developed such that it fits the requirements for MSDS development found at 29 CFR 1910.1200(g), that MSDS could be submitted electronically. EPA's existing regulations don't specify a format for submission of a list of hazardous chemicals under EPCRA section 311. Such a list could be submitted electronically.

If States and locals allow section 312 reporting information to be submitted via the Internet, it will be necessary for the facility owner or operator or its officially designated representative to certify the information submitted. A number of Federal agencies, including EPA, have been striving to develop methods for certification of electronically submitted data. This is a difficult issue, and EPA has not yet resolved it. One option EPA is considering is for the facility owner or operator to mail a signed certification statement to the SERC, or to all three entities, for data that has been submitted electronically. It would be necessary to establish a precise correspondence between the data submitted electronically, and the certification statement submitted by mail. EPA seeks comments on ideas for establishing such a correspondence.

One way to solve the problem of certification of electronically submitted section 312 data is for the data be submitted on a diskette, along with a signed certification statement. The data would be submitted in an electronic format, but would not be transmitted via the Internet. This may reduce some of the current data management burden on regulated facilities, and on SERCs, LEPCs and fire departments that receive EPCRA section 312 information. EPA believes that some States may currently accept section 312 data on diskette (with signed certification on paper), and seeks comments on the feasibility and effectiveness of this reporting option.

Under EPCRA the requirements for Tier II information include providing

the locations of specific chemicals present at a facility. At the same time, EPCRA provides that a facility may request that the SERC or LEPC not disclose confidential location information to the public, for a specific chemical. Under the current regulations a facility may choose to report confidential location information, with respect to a specific chemical, on a Tier II Confidential Location Information Sheet, which must be attached to the other Tier II information being reported. In this way, the SERC, the LEPC and the fire department receive the location information but can readily recognize and separate it in responding to a public request for Tier II information. If EPA develops guidance on electronic submittal for sections 311 and 312 reporting it will be necessary to address issues relating to submission of confidential location information. EPA seeks comments regarding submission of confidential location information electronically.

The requirements for section 312 Tier II information include providing the names of specific chemicals present at a facility; however, the facility may withhold this information from reporting if it claims the information as a trade secret. In addition, the facility may withhold chemical identities from the MSDS or list of chemicals required under section 311, if claimed as trade secret. Although trade secret information may be withheld from the SERC, the LEPC and the fire department, it must be submitted to EPA, along with a substantiation. Forms for trade secrecy claims are available on the CEPPPO Internet site (www.epa.gov/ceppo), and EPA's final rule on trade secrecy (53 FR 28772, July 29, 1988) contains detailed information on how to submit trade secrecy claims. While EPA is exploring, in today's document, development of guidance for electronic submittal of sections 311 and 312 information to SERCs, LEPCs and fire departments, EPA is not considering receiving trade secrecy information electronically. EPA currently believes that the small number of trade secrecy claims that EPA receives for sections 311 and 312 information would not justify the development of a system for electronic submittal of such claims.

EPA is seeking public comments on the development of electronic submittal guidance for sections 311 and 312 reporting, including ideas for certification of electronically submitted data. EPA is interested in public comment regarding any other issues or concerns that may not have been discussed here, but that need to be considered in developing electronic

submittal guidance. EPA is particularly interested in responses from States, LEPCs and fire departments regarding their capabilities for receiving and processing electronically submitted sections 311 and 312 information.

4. Incorporation of Previous Submissions Into EPCRA Section 312 Reporting

Section 312(a) (1) and (2) of EPCRA mandate that the owner or operator of any facility that is required to prepare or have available an MSDS for a hazardous chemical under OSHA prepare and submit an inventory form containing Tier I information annually. Under EPCRA and the existing regulations, facility owners or operators are obliged to report all of the inventory information required under section 312 each year. The Tier I information is the minimum routinely required by the statute and regulations. Some States have imposed stricter reporting requirements under State and local law.

In some cases, a facility may find that some or all of the information from previous year's Tier I submission has not changed. EPA is considering developing guidance to help reduce the burden of re-creating information that has not changed from the previous year. In order for the statutory and regulatory information requirements to be satisfied, any option must ensure that the SERC, LEPC and local fire department have complete, up-to-date, section 312 inventory information by the reporting deadline each year. One option would be for the facility to simply reference and attach a copy of the unchanged information from the previous year's submittal to the current year's Tier I submission. This would mean that the facility would have to retain a copy of its previous submission.

A second option would be for the facility to reference previous submittals retained by the SERC, LEPC, and local fire department. However, if facilities are to submit only their changes each year, then SERCs, LEPCs, and fire departments receiving such reports need to have retained inventory information from prior year(s), in order to have complete, up-to-date information. In addition, facilities would need to accompany such a submission with a statement that the section 312 Tier I (or Tier II) information reported the prior year is "incorporated by reference" in the new submission.

All of the section 312 information is necessary for emergency planning and community right-to-know purposes. Thus, allowing facilities to report under this second option would only be feasible in cases where the SERC, LEPC

and local fire department have maintained the reporting information from prior year(s) such that they continue to have access to all of the information required under section 312. This second reporting option would be limited to those facilities where the SERC, LEPC and fire department establish a policy to retain the necessary section 312 information from year to year, and seeks comments concerning this issue. Further, EPA believes that SERCs, LEPCs and fire departments that choose to implement incorporation of prior submissions by reference should communicate to potentially regulated facilities, that this second reporting option is available.

Under the second reporting option, EPA would consider submission of a statement of the changes in inventory information (or a statement that there are no changes to report), accompanied by a statement that the information submitted in the previous year's Tier I (or Tier II) report is "incorporated by reference" in the new report, to constitute submission of a Tier I "inventory form" as required by statute. A facility that made such a submission would be in compliance with the requirement to report Tier I inventory information under section 312 of EPCRA, provided that upon receipt of such a submission, the net result is that the SERC, LEPC and fire department had all of the Tier I inventory information required under EPCRA section 312 and the implementing regulations. (However, this may not meet State or local laws with more stringent reporting requirements.)

The information required under section 312 and the implementing regulations consists of a variety of data elements beyond the quantities of hazardous chemicals on site, such as the number of days that a chemical was on site, the general location of a chemical within the facility, and an emergency contact person for the facility. It would be necessary to consider each of the data elements required under the statute and implementing regulations, before reporting the changes in information (or that there were no changes), in order to use this reporting method.

If either option were implemented, public access to the Tier II reporting information required under section 312 and the implementing regulations would be preserved, because the public's right to request Tier II information would not be affected and facility owners or operators would still be required to submit Tier II information upon request of the SERC, LEPC or local fire department. In addition, States and local governments can always choose to

establish stricter reporting requirements under State or local law.

Either reporting option would reduce the reporting burden for many regulated facilities, since much of the required information wouldn't typically change from year to year. The burden imposed on SERCs, LEPCs and fire departments may increase under the second option, however, because it would be necessary for these entities to retain reporting information from previous year(s) and to manage or read together more than a single report to comprehend a facility's reported information. If SERCs, LEPCs or fire departments indicate to regulated facilities that it is only necessary to report changes in section 312 information, and then these entities fail to establish a policy for keeping previous year's submissions, necessary inventory information may become less readily available to local emergency officials and the public.

EPA's regulations require the Tier I (or Tier II) information submitted under section 312 of EPCRA to be certified by the facility owner or operator, or an official designated representative, as to its accuracy and completeness. The certification must be accompanied by an original signature. By certifying the accuracy and completeness of a submission that attaches or incorporates previous reports, the certifying individual would be assuming full responsibility for the accuracy and completeness of the entire current submission, including any information attached or incorporated by reference from a previous report. The certifying individual couldn't disclaim responsibility for inaccurate information that was attached or incorporated from previous reports. EPA seeks comments regarding certification of a section 312 Tier I (or Tier II) submission that attaches or incorporates by reference prior section 312 reports.

EPCRA section 312 and the implementing regulations require submission of an inventory form containing, at a minimum, Tier I information. Although EPA publishes uniform federal formats for reporting (the Tier I and Tier II forms), State or local forms containing the same information as the uniform federal forms are acceptable for reporting inventory information. This flexibility is provided in sections 370.40 and 370.41 in the existing rule. Section 370.40 in today's proposed rule likewise provides that State or local formats containing at least the Tier I information are acceptable. The reporting requirements concern the specific information to be reported, not the form itself. EPA believes that a report stating any

changes in information, and attaching or incorporating by reference information previously submitted, could constitute an "inventory form." EPA also believes that, provided that such a report contains, attaches, or incorporates at least the Tier I information, the statutory and regulatory requirements regarding the contents of an inventory form would be met. In EPA's judgement, the SERC, LEPC and fire department could implement either reporting option without a change to the federal EPCRA regulations.

In considering these reporting options, EPA's intent is to balance the amount of information generated under section 312 and the value of that information, with the costs of providing and managing the information. EPA is soliciting comments as to whether these reporting options are feasible, particularly the second option. In addition, EPA seeks public comment on whether the Agency should develop regulations to support or control either of these reporting options. EPA particularly seeks input from SERCs, LEPCs and fire departments about administrative and implementation issues or concerns, associated with the second option.

B. Electronic Access to Facilities' Databases of MSDSs

EPA believes that some facilities maintain an electronic database of MSDSs. EPA is exploring the possibility of allowing a facility to meet the requirement under EPCRA section 311 for submitting MSDSs by giving the SERC, LEPC, and local fire department electronic access to the facility's database of MSDSs, instead of actually submitting the MSDSs to each of the three entities. EPA is not advancing this reporting option at this time, but is seeking comment on the feasibility of such an option. This reporting option raises several concerns. It would be necessary to ensure that the SERC, LEPC or local fire department had the capabilities to access such a database at any time, to ensure the required information was clearly delineated and readily accessible, and to ensure that access was uninterrupted, even in the event of an emergency situation. While this option would reduce the burden on regulated facilities, it could increase the burden on the SERC, LEPC, or local fire department. EPA seeks comments on how this option would increase or decrease the burden on SERCs, LEPCs, and fire departments. EPA also seeks comment on whether facilities allowing access to an electronic database of MSDSs could constitute submission of

an MSDS, as required under EPCRA section 311(a)(1).

C. Interpretation of the Hazardous Chemical Exemption for Solids Under EPCRA Section 311(e)(2)

EPA is considering interpreting the exemption for hazardous chemicals found at EPCRA section 311(e)(2) so that only the amount of fume or dust given off a piece of metal (or other manufactured solid) that is being modified be subject to EPCRA sections 311 and 312 and applied toward threshold determination.

Under EPCRA section 311(e)(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" is exempt from the definition of hazardous chemical and therefore need not be reported under sections 311 and 312. EPA's interpretation of this exemption has been that portions of metal stock that are modified such that exposure to a hazardous chemical can occur should be counted to determine the quantity present for threshold purposes. For example, if there are 10,000 pounds of steel undergoing a welding process at a facility at any one time, then 10,000 pounds would need be counted toward the quantity for threshold determination.

EPA believes that the current interpretation of this exemption occasionally requires reporting of information that is unnecessary for emergency planning and community right-to-know purposes. Refining this interpretation would relieve facilities from reporting that unnecessary information. Under this approach, the facility owner or operator would need to quantify the amount of fume or dust given off during a modification process, in order to apply that amount toward threshold determination.

EPA's intention is to interpret this exemption in a reasonable manner, one that provides a balance between the amount of information required to be reported, and the usefulness of the information for the protection of public health and the environment. EPA requests comments concerning whether it should revise its guidance on the meaning of this exemption and, if so, whether the alternative interpretation described above is sensible.

EPA would also like to clarify that, under any of the interpretations of this exemption being considered, stamping a piece of sheet metal doesn't negate the exemption for that piece of metal; the piece of metal would still qualify for the exemption. EPA believes that the stamping of sheet metal does not

present exposure to a hazardous chemical.

EPA also seeks to clarify that bricks generally need not be reported under sections 311 and 312, provided that they are being neither manufactured nor modified, because they fall under the exemption at EPCRA section 311(e)(2). However, if a brick undergoes a modification process (for example cutting) such that exposure to a hazardous chemical can occur, then under the current interpretation, the brick would no longer be exempt; and under the alternative interpretation under consideration, that portion of the brick released as fume or dust would no longer be exempt, but the remainder of the brick would be exempt.

D. EPCRA Section 312 Reporting to Fulfill Reporting Requirements Under Section 311

EPA is considering guidance that addresses how facilities may use section 312 reporting to fulfill the reporting requirements under section 311, provided that the reporting conforms to the required time frame and that Tier II information is reported. The information and timing requirements are discussed below.

Section 312 reporting can only be used to fulfill section 311 reporting if the section 312 report contains all of the information required under section 311. Section 311 permits the choice of submitting either an MSDS for each hazardous chemical being reported, or a list of such chemicals grouped by hazard categories. Under section 312, a regulated facility may choose to submit Tier I information or Tier II information; some States may require Tier II information. Tier II information includes all of the data required under section 311. Tier II information requires the reporting of hazardous chemicals, with an indication of which hazard categories apply to each chemical being reported. In short, Tier II information constitutes a list of hazardous chemicals identified by hazard category, consistent with section 311.

In addition, section 312 and its implementing regulations require reporting Tier I information by March 1 of each year for which hazardous chemicals were present at a facility during the preceding year, and Tier II information within 30 days of a request from the SERC, the LEPC or the fire department. Section 311 and its implementing regulations require reporting within 3 months after becoming subject to the reporting requirements, or within 3 months after discovery of significant new information concerning a hazardous chemical that

has already been reported, or within 30 days of a request from the SERC, LEPC or the fire department. For any given year, a section 312 submission may be made between January 1 and March 1 of the following year. Section 312 reporting could be used to meet section 311 reporting for only those facilities that become subject to reporting under section 311, or discover significant new information concerning a hazardous chemical, between October 1 and December 31 of any given calendar year.

Both sections 311 and 312 require submission of reporting information to the SERC, the LEPC and the fire department with jurisdiction over the facility, so allowing section 312 reporting to meet section 311 reporting requirements does not create any difficulties concerning recipients of the information.

EPA seeks comments from regulated facilities, SERCs, LEPCs, and local fire departments regarding the usefulness of guidance on this reporting option, and any difficulties that may have been encountered in the past that might be relevant.

E. Emergency Planning Notification

Section 355.20 in today's proposed rule provides requirements for emergency planning notification. That section is based on section 355.30 of the existing regulations, and indicates that notice of any changes relevant to emergency planning, and any information requested by the LEPC that is necessary for developing or implementing the local emergency plan, must be submitted promptly to the SERC and the LEPC. EPA is taking this opportunity to consider guidance on the meaning of "promptly." EPA does not intend to define the term "promptly," however, EPA believes that 10 to 20 working days is generally a reasonable amount of time to provide such notice. EPA requests public comment on this potential guidance.

F. Emergency Release Notification

Section 355.40 in today's proposed rule provides requirements for emergency release notification. That section is based on section 355.40 of the existing regulations, and indicates that a written follow-up emergency notice is to be provided as soon as practicable after a release. EPA is taking this opportunity to consider guidance on the meaning of "as soon as practicable." EPA does not

intend to define the phrase "as soon as practicable"—the amount of time required to provide a written follow-up notice will depend on the specific circumstances of an incident. However, EPA believes that it should be practicable to provide such notice in no more than 30 days (although, depending on the circumstances, more or less time may be appropriate for the written follow-up notification). EPA requests public comment on this potential guidance.

VI. What Else Is Different About This Rule?

A. Plain English Format

EPA is proposing today to rewrite and reorganize all of parts 355 and 370, which cover requirements for emergency planning and release notification and hazardous chemical community right-to-know reporting, to make them clearer and easier to use. These changes are proposed as part of the Agency's ongoing efforts at regulatory reinvention. Although the format has changed as a result of rewriting the regulatory text in "plain English," the only substantive regulatory changes that EPA is proposing are those discussed above, under the heading What Regulatory Changes is EPA Proposing in This Rule? EPA is not intending to revise, reopen or reconsider the merits of any other aspects of the existing regulatory requirements at 40 CFR parts 355 and 370. In today's document EPA is also exploring the development of guidance on the implementation of existing statutory and regulatory requirements, as discussed under the heading What Draft Guidance is EPA Publishing in This Preamble? Any previous policy statements, interpretations, or guidance issued by EPA concerning the existing requirements under parts 355 and 370 would not be changed by today's document, except for the specific guidance EPA has described in this document.

EPA is seeking comments concerning whether the plain English format that is proposed in today's rulemaking is, in fact, clearer and easier to use than the existing regulatory text. EPA requests suggestions for improving the readability of the rule. EPA also is requesting comments on whether any unintended substantive changes have been made as a result of rewriting the

regulatory text in plain English. Comments are requested concerning all issues and options regarding the specific substantive regulatory changes that are discussed in this preamble. However, the regulations at 40 CFR parts 355 and 370 have been in effect for many years and EPA is not soliciting comments on any other aspects regarding the merits of those regulations in today's rulemaking.

One of the proposed changes to parts 355 and 370 is to use tables to reorganize and clarify some of the requirements. In particular, sections 355.20, 355.60 and 370.14 of today's proposed rule each contain tables. EPA is interested in public comment on the usefulness of the proposed tables. Note that ellipses are used in the proposed tables to help the reader walk through the tables, and do not reflect the omission of any text. Ellipses used in the body of a table indicate that the rows contain sentences to be read across the table from left to right. Ellipses used in the heading of a table indicate the continuation of a concept in the rows below.

It is important to understand that all of the requirements found in today's proposed regulations, including those set forth in table format, constitute binding, enforceable legal requirements. The plain English format used in today's proposed regulations may appear different from other rules, but it establishes binding, enforceable legal requirements like those in the existing regulations at 40 CFR parts 355 and 370. Note, however, that EPA has added some non-binding guidance in today's proposed regulations in the form of notes. Such notes are indicated in the regulations by the word "note" and a smaller typeface (see, for example, the note at the end of proposed paragraph 355.40(b)). These notes are intended to improve understanding of the regulatory requirements, but are not binding under EPCRA. Proposed sections 355.1 and 370.1 explain that the notes are considered non-binding guidance.

B. Conversion Table

In an effort to make the requirements clearer and easier to use, the existing parts 355 and 370 have been reorganized. The conversion table below will help you to determine where the various sections of the existing regulations are located in today's proposed rule:

Existing section	Proposed section(s)	Comment
355.10	355.1	Definitions for parts 355 and 370 were consolidated.
355.20	355.61	

Existing section	Proposed section(s)	Comment
355.30	355.10, 355.11, 355.12, 355.13, 355.14, 355.15, 355.16, 355.20.	
355.40	355.30, 355.31, 355.32, 355.33, 355.40, 355.42, 355.43, 355.60.	
355.50	Penalty provisions were removed from the regulation; penalties continue to apply under statutory authority.
	355.2	New section.
	355.3	New section.
	355.21	New section.
	355.41	New section.
370.1	370.1	
370.2	355.61, 370.13	Definitions for parts 355 and 370 were consolidated; exceptions to the definition of hazardous chemical were also placed in section 370.13.
370.5	Penalty provisions were removed from the regulation; penalties continue to apply under statutory authority.
370.20	370.10, 370.12, 370.20, 370.30, 370.33, 370.40, 370.45.	
370.21	370.10, 370.30, 370.31, 370.32, 370.33, 370.62.	
370.25	370.10, 370.40, 370.44, 370.45, 370.62, 370.65.	
370.28	370.14.	
370.30	370.10, 370.60, 370.61, 370.62, 370.63.	
370.31	370.63, 370.64	
370.40	370.40, 370.41, 370.43	Tier I form and instructions were removed.
370.41	370.40, 370.42, 370.43, 370.64	Tier II form and instructions were removed.
	370.2	New section.
	370.3	New section.
	370.11	New section.

VII. Where Are SERCs and LEPCs Listed?

You may access a database of SERCs and LEPCs by visiting the CEPPPO Internet site, at www.epa.gov/ceppo. The database provides the most up-to-date information that EPA has regarding contacts, phone numbers and addresses for SERCs and LEPCs. This information is subject to change, however. You may also contact the Hotline for information regarding SERCs, and your SERC should be able to direct you to your LEPC. Hotline phone numbers are listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. EPA is providing this information here in an effort to ease compliance with the regulations at 40 CFR parts 355 and 370.

VIII. Regulatory Analyses

A. Executive Order No. 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. This proposed rule is considered significant because it advances novel policy issues. Thus, EPA has submitted this action to OMB for review. The draft of this proposed rulemaking document submitted to OMB for review, related documents, and changes made in response to OMB suggestions or recommendations will be documented in the public record and made available for public inspection at EPA's CERCLA Docket Office (Docket No. 300RR-IF-1).

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, or SBREFA) whenever an agency is required to publish a notice of rulemaking for any proposed or final

rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule would reduce regulatory burdens for small entities. The overall economic effect of this regulation has been estimated to equate to 588,054 hours of burden reduction (with no added burden) at a total cost saving of approximately \$16 million per year to all regulated entities. Therefore, this regulation will result in a cost savings. Accordingly, the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection analysis for this proposed rule has been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection

Request (ICR) document has been prepared by EPA (ICR No.1352.05) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

EPA currently has an approved ICR (ICR No. 1395.03) of 965,982 hours for the existing EPCRA sections 302, 303 and 304 (40 CFR part 355) reporting requirements, based on 106,400 annual responses, averaging 20.75 hours per response for newly regulated facilities, 11.5 hours for existing facilities, and approximately 5 hours for emergency release notification requirements with no annual record keeping burden hours. Also, EPA currently has an approved ICR (ICR No. 1352.04) of 2,963,209 hours for the existing EPCRA sections 311 and 312 reporting requirements (40 CFR part 370), based on 868,527 annual responses, averaging 3.1 hours per response with no annual record keeping burden hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

As part of the President's program for reinventing government and reforming regulatory policy, EPA is proposing to relax the reporting burden imposed by the EPCRA regulations at 40 CFR parts 355 and 370. EPA anticipates that today's proposed rulemaking will reduce the burden for part 370 from 2,963,209 hours to 2,375,155 hours, for a reduction of 588,054 hours under ICR No. 1352.04. This translates into an estimated cost savings of over \$16 million.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed

in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden reduction estimates, and any suggested methods for further minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 8, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by July 8, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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, section 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.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule is intended to provide burden relief, and doesn't impose additional costs to State, local, or tribal governments, or to the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The intent of this rule is to provide burden relief to regulated entities, including small governments.

E. Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. By proposing to rewrite the regulations at 40 CFR parts 355 and 370 in plain English, EPA intends to make the rule clearer and more easy to use, which may decrease the costs of compliance and also promote more meaningful public participation under EPCRA. This will benefit all of the public, including minorities and low-income populations.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) That are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA is not proposing any new test methods or other technical standards as part of today's rule, which proposes revisions to the regulations implementing the emergency planning and release notification and hazardous chemical community right-to-know requirements under EPCRA. Thus, the Agency does not need to consider the use of voluntary consensus standards in developing this proposed rule. EPA invites public comment on this analysis.

G. Executive Order 13045

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because a) this is not an economically significant regulatory action as defined by E.O. 12866 and b) the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

List of Subjects in 40 CFR Parts 355 and 370

Environmental protection, Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency planning and community right-to-know act, Hazardous substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Threshold planning quantity, Water pollution control, Water supply.

Dated: May 21, 1998.

Carol M. Browner,
Administrator.

For the reasons discussed in the preamble the Environmental Protection Agency proposes to revise 40 CFR parts 355 and 370 as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

Subpart A—General Information

Sec.

- 355.1 What is the purpose of this part?
- 355.2 Who do "you," "I," and "your" refer to in this part?
- 355.3 Which section contains the definitions of the key words used in this part?

Subpart B—Emergency Planning

Who Must Comply

- 355.10 Must my facility comply with the emergency planning requirements of this subpart?
- 355.11 To what substances do the emergency planning requirements of this subpart apply?
- 355.12 What quantities of extremely hazardous substances trigger emergency planning requirements?
- 355.13 How do I calculate the quantity of extremely hazardous substances present in mixtures?
- 355.14 Do I have to aggregate extremely hazardous substances to determine quantities present?
- 355.15 Which threshold planning quantity do I use for extremely hazardous substances present at my facility in solid form?
- 355.16 How do I determine the quantity of extremely hazardous substances present for certain forms of solids?

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?
- 355.21 What format should the information be in?

Subpart C—Emergency Release Notification

Who Must Comply

- 355.30 What facilities must comply with the emergency release notification requirements of this subpart?
- 355.31 What types of releases are exempt from the emergency release notification requirements of this subpart?
- 355.32 Which emergency release notification requirements apply to continuous releases?
- 355.33 Release of what quantities of EHSs and CERCLA hazardous substances trigger the emergency release notification requirements of this subpart?

How To Comply

- 355.40 What information must I provide?
- 355.41 What format should the information be in?
- 355.42 To whom must I submit the information?
- 355.43 When must I submit the information?

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?
- 355.61 How are key words in this part defined?

Appendix A to Part 355—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities (Alphabetical Order)

Appendix B to Part 355—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities (CAS Number Order)

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 § 355.62. 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. When a defined word first appears in this part, it is printed with the initial letter capitalized.

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). SERC means the 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 Indian Tribe under whose jurisdiction the facility is located.

(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 extremely hazardous substance (EHS). EHSs are listed in appendices A and B of this part. If a facility is designated for emergency planning purposes, as provided in § 355.10(b) of this subpart, substances that are not EHSs may become subject to the emergency planning requirements of this subpart.

§ 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 threshold planning quantity triggers the emergency planning requirements of this subpart. The threshold planning quantities 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 extremely hazardous substances present in mixtures?

If an EHS is present in a Mixture in a particular container, then determine the actual quantity of EHS in that container as follows: multiply the concentration of EHS (in weight percent) by the weight (in pounds) of mixture in the container. If the concentration of an EHS is less than or equal to one percent, you do not have to count that EHS present in the mixture. The following example illustrates the provisions of this paragraph:

Example

If you have 150 pounds of a mixture that contains 20 percent of a certain EHS, the quantity of that EHS present in the mixture can be calculated as follows:

$$\begin{aligned} \text{EHS (in pounds)} &= (\text{weight percent of EHS}) \times (\text{weight of mixture}) \\ &= (20 \text{ percent}) \times (150 \text{ pound mixture}) \\ &= (0.20) \times (150) \\ \text{EHS (in pounds)} &= 30 \text{ pounds} \end{aligned}$$

§ 355.14 Do I have to aggregate extremely hazardous substances to determine quantities present?

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

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

Extremely hazardous substances 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. The following explains how to determine which of the

two listed TPQs you must use for an extremely hazardous substance present at your facility in solid form:

(a) Use the lower TPQ, from appendices A and B of this part, if the solid is in one of the following four categories:

(1) The solid is in powdered form and has a particle size less than 100 microns.

(2) The solid is in solution.

(3) The solid is in molten form.

(4) The solid 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) Use the higher TPQ, from appendices A and B of this part, if the solid does not meet one of the criteria in paragraph (a) of this section. The higher TPQ is 10,000 pounds in every case.

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

For the following three forms of solids, which are listed in § 355.15(a), 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 the 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?

The following table tells you what information you must provide to comply with the emergency planning requirements of this subpart. The table also tells you to whom you must provide the information, and when the information is due:

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?
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 (LEPC means the local emergency planning committee appointed by the SERC).	By May 17, 1987, or 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 report to the LEPC within 30 days after establishment of a LEPC for the emergency planning district in which your facility is located.
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).	By September 17, 1987, or 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 facility emergency coordinator notification, then provide an additional report to the LEPC within 30 days after establishment of a LEPC for the emergency planning district in which your facility is located.
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	Promptly.
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.

§ 355.21 What format should the information be in?

EPA does not require any specific format. Note: 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 a specific format for this information.

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 the following two conditions are met:

- (a) A Hazardous Chemical is produced, used, or stored at your facility.
- (b) There is a release of a Reportable Quantity (RQ) of any extremely hazardous substance, or of a hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA Hazardous Substance) at your facility, except that 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 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 five 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 CERCLA section 103(a) reporting under section 103(e) of CERCLA.
- (d) Any release that doesn't 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 materials; and replacing materials in mined-out areas as long as such materials have not been beneficiated or processed and do not contain elevated radionuclide concentrations (greater than 7.6 picocuries per gram or pCi/g of Uranium-238, 6.8 pCi/g of Thorium-232, or 8.4 pCi/g of Radium-226).

(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.

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

If there is a release of an EHS or CERCLA hazardous substance that is continuous and stable in quantity and rate at your facility, as defined in 40 CFR 302.8(b), the release qualifies for reduced reporting requirements under this subpart. Under the 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 Release of what 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. Reportable quantities for extremely hazardous substances are listed in appendices A and B of this part, in the column labeled "reportable quantity." Reportable quantities for CERCLA hazardous substances are listed in Table 302.4 of 40 CFR part 302, 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). You must include the following information in your notifications:

(a) *Immediate notification.* Your immediate notice must include all of the following, to the extent known at the time of notice and so long as no delay in notice or emergency response results:

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

(2) An indication of whether the substance is an extremely hazardous substance.

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

(4) 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 during transportation, or 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 set forth 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 to 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.

Note to paragraph (b): You are not required to submit a written follow-up notification for a release during transportation, or storage incident to transportation. See § 355.42(b) for requirements for reporting such releases.

§ 355.41 What format should the information be in?

The immediate notification, described in § 355.40(a), should be oral. The written follow-up emergency notification, described in § 355.40(b), must be in writing. The 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 required emergency release notification information (both the immediate and written follow-up notification) to both of the following:

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

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

(b) With respect to a release during transportation, or 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?

You must provide the required emergency release notification information as follows:

(a) Provide the notice described under § 355.40(a), immediately.

(b) 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 reporting requirements of CERCLA section 103, codified at 40 CFR part 302. Refer to the following 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 then you must	And if the release is reportable under CERCLA section 103 then you must
And the substance is on BOTH the list of EPCRA Extremely Hazardous Substances (appendices A and B of this part) AND the list of CERCLA Hazardous Substances (Table 302.4 of 40 CFR 302.4).	Notify the local emergency planning committee (the LEPC) and the State emergency response commission (the SERC), in accordance with §§ 355.40 through 355.43 of this part (see exception for a release during transportation or storage incident to transportation, as provided in § 355.42(b)).	Comply with the release reporting requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the National Response Center at 800/424-8802.
And the substance is on the list of CERCLA Hazardous Substances (Table 302.4 of 40 CFR 302.4) and NOT on the list of EPCRA extremely hazardous substances (appendices A and B of this part).	Notify the LEPC and the SERC, in accordance with §§ 355.40 through 355.43 of this part (see exception for a release during transportation or storage incident to transportation, as provided in § 355.42(b)).	Comply with the release reporting requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the National Response Center at 800/424-8802.
And the substance is on the list of EPCRA Extremely Hazardous Substances (appendices A and B of this part) and NOT on the list of CERCLA Hazardous Substances (Table 302.4 of 40 CFR 302.4).	Notify the LEPC and the SERC, in accordance with §§ 355.40 through 355.43 of this part (see exception for a release during transportation or storage incident to transportation, as provided in § 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?

This section contains the definitions of key words for 40 CFR parts 355 and 370. Therefore some of the key words defined in this section do not appear in this part, but appear in 40 CFR part 370 (40 CFR 370.3 indicates that definitions for part 370 are in this section). Many of the defined key words appear in both 40 CFR parts 355 and 370.

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

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 federal Emergency Planning and Community Right-To-Know Act.

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.

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 the following substances:

(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.

Hazardous substances:

(1) **CERCLA hazardous substance** means a substance defined in section 101(14) of CERCLA. A list of such substances appears in Table 302.4 of 40 CFR part 302.

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

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country 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 the EPA. These forms can be used for reporting inventory information, as described in 40 CFR 370.40 through 370.45.

LEPC or Local emergency planning committee 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, 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. For the purposes of part 370, *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 Occupational Safety and Health Act of 1970.

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, extremely hazardous substance, or CERCLA hazardous substance.

Reportable quantity means, for any CERCLA hazardous substance, the reportable quantity established in Table 302.4 of 40 CFR part 302, for such substance. For any extremely hazardous substance, reportable quantity means the reportable 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 or State Emergency Response Commission means the 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 an emergency response commission 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 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	l	5,000	1,000/10,000
107-13-1	Acrylonitrile	l	100	10,000
814-68-6	Acrylyl Chloride	h	100	100
111-69-3	Adiponitrile	l	1,000	1,000
116-06-3	Aldicarb	c	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	b	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	l	100	500
300-62-9	Amphetamine		1,000	1,000
62-53-3	Aniline	l	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	c	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	h	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)-	g	500	500/10,000

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)
98-07-7	Benzotrithloride		10	100
100-44-7	Benzyl Chloride		100	500
140-29-4	Benzyl Cyanide		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))-	h	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	l	500	500
1306-19-0	Cadmium Oxide		100	100/10,000
2223-93-0	Cadmium Stearate	c	1,000	1,000/10,000
7778-44-1	Calcium Arsenate		1	500/10,000
8001-35-2	Camphchlor		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)-	d	1	100/10,000
1563-66-2	Carbofuran		10	10/10,000
75-15-0	Carbon Disulfide	l	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	h	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	l	10	10,000
542-88-1	Chloromethyl Ether	h	10	100
107-30-2	Chloromethyl Methyl Ether	c	10	100
3691-35-8	Chlorophacinone		100	100/10,000
1982-47-4	Chloroxuron		500	500/10,000
21923-23-9	Chlorthiophos	h	500	500
10025-73-7	Chromic Chloride		1	1/10,000
62207-76-5	Cobalt, ((2,2'-(1,2-Ethanediyibis (Nitrilomethylidyne)) Bis(6-Fluorophenolato))(2-)- N,N',O,O')-		100	100/10,000
10210-68-1	Cobalt Carbonyl	h	10	10/10,000
64-86-8	Colchicine	h	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	l	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	h	500	500
71-63-6	Digitoxin	c	100	100/10,000
2238-07-5	Diglycidyl Ether		1,000	1,000
20830-75-5	Digoxin	h	10	10/10,000
115-26-4	Dimefox		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)
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	h	500	500
57-14-7	Dimethylhydrazine		10	1,000
99-98-9	Dimethyl-p-Phenylenediamine		10	10/10,000
644-64-4	Dimetilan	d	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
152-16-9	Diphosphoramidate, 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	h	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	l	100	1,000
2104-64-5	EPN		100	100/10,000
50-14-6	Ergocalciferol	c	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	h	500	500
371-62-0	Ethylene Fluorohydrin	c, h	10	10
75-21-8	Ethylene Oxide	l	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	h	500	500
4301-50-2	Flueneil		100	100/10,000
7782-41-4	Fluorine	k	10	500
640-19-7	Fluoroacetamide	j	100	100/10,000
144-49-0	Fluoroacetic Acid		10	10/10,000
359-06-8	Fluoroacetyl Chloride	c	10	10
51-21-8	Fluorouracil		500	500/10,000
944-22-9	Fonofos		500	500
50-00-0	Formaldehyde	l	100	500
107-16-4	Formaldehyde Cyanohydrin	h	1,000	1,000
23422-53-9	Formetanate Hydrochloride	d, h	1	500/10,000
2540-82-1	Formothion		100	100
17702-57-7	Formparanate	d	1	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	h	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)	l	5,000	500
7664-39-3	Hydrogen Fluoride		100	100
7722-84-1	Hydrogen Peroxide (Conc > 52%)	l	1,000	1,000
7783-07-5	Hydrogen Selenide		10	10
7783-06-4	Hydrogen Sulfide	l	100	500
123-31-9	Hydroquinone	l	100	500/10,000
13463-40-6	Iron, Pentacarbonyl-		100	100
297-78-9	Isobenzan		100	100/10,000
78-82-0	Isobutyronitrile	h	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	Isofluorophate	c	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)
4098-71-9	Isophorone Diisocyanate		100	100
108-23-6	Isopropyl Chloroformate		1,000	1,000
119-38-0	Isopropylmethylpyrazolyl Dimethylcarbamate	d	1	500
78-97-7	Lactonitrile		1,000	1,000
21609-90-5	Leptophos		500	500/10,000
541-25-3	Lewisite	c, h	10	10
58-89-9	Lindane		1	1,000/10,000
7580-67-8	Lithium Hydride	b	100	100
109-77-3	Malononitrile		1,000	500/10,000
12108-13-3	Manganese, Tricarbonyl Methylcyclopentadienyl	h	100	100
51-75-2	Mechlorethamine	c	10	10
950-10-7	Mephosfolan		500	500
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	h	1,000	500
920-46-7	Methacryloyl Chloride		100	100
30674-80-7	Methacryloyloxyethyl Isocyanate	h	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	h	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	l	1,000	1,000
79-22-1	Methyl Chloroformate	h	1,000	500
60-34-4	Methyl Hydrazine		10	500
624-83-9	Methyl Isocyanate		10	500
556-61-6	Methyl Isothiocyanate	b	500	500
74-93-1	Methyl Mercaptan	l	100	500
3735-23-7	Methyl Phenkapton		500	500
676-97-1	Methyl Phosphonic Dichloride	b	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	h	500	500
1129-41-5	Metolcarb	d	1	100/10,000
7786-34-7	Mevinphos		10	500
315-18-4	Mexacarbate		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	h	500	500
13463-39-3	Nickel Carbonyl		10	1
54-11-5	Nicotine	c	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	c	10	100
98-95-3	Nitrobenzene	l	1,000	10,000
1122-60-7	Nitrocyclohexane		500	500
10102-44-0	Nitrogen Dioxide		10	100
62-75-9	Nitrosodimethylamine	h	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	c	100	100/10,000
23135-22-0	Oxamyl	d	1	100/10,000
78-71-7	Oxetane, 3,3-Bis(Chloromethyl)-		500	500
2497-07-6	Oxydisulfoton	h	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	c	10	100
298-00-0	Parathion-Methyl	c	100	100/10,000
12002-03-8	Paris Green		1	500/10,000
19624-22-7	Pentaborane		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)
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	d	1	500/10,000
58-36-6	Phenoxarsine, 10,10'-Oxydi-		500	500/10,000
696-28-6	Phenyl Dichloroarsine	h	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	h	100	100/10,000
103-85-5	Phenylthiourea		100	100/10,000
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	l	10	10
732-11-6	Phosmet		10	10/10,000
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	c, g	500	500
7723-14-0	Phosphorus	b, h	1	100
10025-87-3	Phosphorus Oxychloride		1,000	500
10026-13-8	Phosphorus Pentachloride	b	500	500
7719-12-2	Phosphorus Trichloride		1,000	1,000
57-47-6	Physostigmine	d	1	100/10,000
57-64-7	Physostigmine, Salicylate (1:1)	d	1	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	b	10	100
506-61-6	Potassium Silver Cyanide	b	1	500
2631-37-0	Promecarb	d, h	1	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-	g	100	100/10,000
109-61-5	Propyl Chloroformate		500	500
75-56-9	Propylene Oxide	l	100	10,000
75-55-8	Propyleneimine		1	10,000
2275-18-5	Prothoate		100	100/10,000
129-00-0	Pyrene	c	5,000	1,000/10,000
140-76-1	Pyridine, 2-Methyl-5-Vinyl-		500	500
504-24-5	Pyridine, 4-Amino-	h	1,000	500/10,000
1124-33-0	Pyridine, 4-Nitro-,l-Oxide		500	500/10,000
53558-25-1	Pyriminil	h	100	100/10,000
14167-18-1	Salcomine		500	500/10,000
107-44-8	Sarin	h	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	1,000
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))	b	1,000	500
124-65-2	Sodium Cacodylate		100	100/10,000
143-33-9	Sodium Cyanide (Na(CN))	b	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	h	100	100/10,000
10102-20-2	Sodium Tellurite		500	500/10,000
900-95-8	Stannane, Acetoxytriphenyl-	g	500	500/10,000
57-24-9	Strychnine	c	10	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)
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	1	500	500
7783-60-0	Sulfur Tetrafluoride		100	100
7446-11-9	Sulfur Trioxide	b	100	100
7664-93-9	Sulfuric Acid		1,000	1,000
77-81-6	Tabun	c, h	10	10
7783-80-4	Tellurium Hexafluoride	k	100	100
107-49-3	TEPP		10	100
13071-79-9	Terbufos	h	100	100
78-00-2	Tetraethyllead	c	10	100
597-64-8	Tetraethyltin	c	100	100
75-74-1	Tetramethyllead	c, 1	100	100
509-14-8	Tetranitromethane		10	500
10031-59-1	Thallium Sulfate	h	100	100/10,000
6533-73-9	Thallous Carbonate	c, h	100	100/10,000
7791-12-0	Thallous Chloride	c, h	100	100/10,000
2757-18-8	Thallous Malonate	c, h	100	100/10,000
7446-18-6	Thallous Sulfate		100	100/10,000
2231-57-4	Thiocarbazine		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	h	500	500
327-98-0	Trichloronate	k	500	500
98-13-5	Trichlorophenylsilane	h	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	h	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	h	100	100
2001-95-8	Valinomycin	c	1,000	1,000/10,000
1314-62-1	Vanadium Pentoxide		1,000	100/10,000
108-05-4	Vinyl Acetate Monomer	1	5,000	1,000
81-81-2	Warfarin		100	500/10,000
129-06-6	Warfarin Sodium	h	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	b	100	500

* Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

NOTES:

a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.

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

c The calculated TPQ changed after technical review as described in the technical support document.

d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.

e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).

f [Reserved]

g New chemicals added that were not part of the original list of 402 substances.

h Revised TPQ based on new or re-evaluated toxicity data.

j TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.

k The TPQ was revised after proposal due to calculation error.

l Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

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	l	100	500
50-07-7	Mitomycin C		10	500/10,000
50-14-6	Ergocalciferol	c	1,000	1,000/10,000
51-21-8	Fluorouracil		500	500/10,000
51-75-2	Mechlorethaminec	c	10	10
51-83-2	Carbachol Chloride		500	500/10,000
54-11-5	Nicotine	c	100	100
54-62-6	Aminopterin		500	500/10,000
55-91-4	Isofluorophate	c	100	100
56-25-7	Cantharidin		100	100/10,000
56-38-2	Parathion	c	10	100
56-72-4	Coumaphos		10	100/10,000
57-14-7	Dimethylhydrazine		10	1,000
57-24-9	Strychnine	c	10	100/10,000
57-47-6	Physostigmine	d	1	100/10,000
57-57-8	Propiolactone, Beta-		10	500
57-64-7	Physostigmine, Salicylate (1:1)	d	1	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	l	5,000	1,000
62-73-7	Dichlorvos		10	1,000
62-74-8	Sodium Fluoroacetate		10	10/10,000
62-75-9	Nitrosodimethylamine	h	10	1,000
64-00-6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate	d	1	500/10,000
64-86-8	Colchicine	h	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	l	10	10,000
70-69-9	Propiophenone, 4-Amino-	g	100	100/10,000
71-63-6	Digitoxin	c	100	100/10,000
72-20-8	Endrin		1	500/10,000
74-83-9	Methyl Bromide	l	1,000	1,000
74-90-8	Hydrocyanic Acid		10	100
74-93-1	Methyl Mercaptan	l	100	500
75-15-0	Carbon Disulfide	l	100	10,000
75-21-8	Ethylene Oxide	l	10	1,000
75-44-5	Phosgene	l	10	10
75-55-8	Propyleneimine		1	10,000
75-56-9	Propylene Oxide	l	100	10,000
75-74-1	Tetramethyllead	c, l	100	100
75-77-4	Trimethylchlorosilane		1,000	1,000
75-78-5	Dimethyldichlorosilane	h	500	500
75-79-6	Methyltrichlorosilane	h	500	500
75-86-5	Acetone Cyanohydrin		10	1,000
76-02-8	Trichloroacetyl Chloride		500	500
77-47-4	Hexachlorocyclopentadiene	h	10	100
77-78-1	Dimethyl Sulfate		100	500
77-81-6	Tabun	c, h	10	10
78-00-2	Tetraethyllead	c	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	h	1,000	1,000
78-94-4	Methyl Vinyl Ketone		10	10
78-97-7	Lactonitrile		1,000	1,000
79-06-1	Acrylamide	l	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	h	1,000	500
80-63-7	Methyl 2-Chloroacrylate		500	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)
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
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	h	500	500
98-16-8	Benzenamine, 3-(Trifluoromethyl)-		500	500
98-87-3	Benzal Chloride		5,000	500
98-95-3	Nitrobenzene	l	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	l	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	l	100	10,000
107-15-3	Ethylenediamine		5,000	10,000
107-16-4	Formaldehyde Cyanohydrin	h	1,000	1,000
107-18-6	Allyl Alcohol		100	1,000
107-30-2	Chloromethyl Methyl Ether	c	10	100
107-44-8	Sarin	h	10	10
107-49-3	TEPP		10	100
108-05-4	Vinyl Acetate Monomer	l	5,000	1,000
108-23-6	Isopropyl Chloroformate		1,000	1,000
108-91-8	Cyclohexylamine	l	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	l	1,000	1,000
115-21-9	Trichloroethylsilane	h	500	500
115-26-4	Dimefox		500	500
115-29-7	Endosulfan		1	10/10,000
115-90-2	Fensulfothion	h	500	500
116-06-3	Aldicarb	c	1	100/10,000
119-38-0	Isopropylmethylpyrazolyl Dimethylcarbamate	d	1	500
123-31-9	Hydroquinone	l	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	h	1,000	500
129-00-0	Pyrene	c	5,000	1,000/10,000
129-06-6	Warfarin Sodium	h	100	100/10,000
140-29-4	Benzyl Cyanide	h	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))	b	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	b	10	100
151-56-4	Ethyleneimine		1	500
152-16-9	Diphosphoramidate, Octamethyl-		100	100
297-78-9	Isobenzan		100	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)
297-97-2	Thionazin		100	500
298-00-0	Parathion-Methyl	c	100	100/10,000
298-02-2	Phorate		10	10
298-04-4	Disulfoton		1	500
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	h	1	1/10,000
327-98-0	Trichloronate	k	500	500
353-42-4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
359-06-8	Fluoroacetyl Chloride	c	10	10
371-62-0	Ethylene Fluorohydrin	c, h	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-	h	1,000	500/10,000
505-60-2	Mustard Gas	h	500	500
506-61-6	Potassium Silver Cyanide	b	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	Dinitroresol		10	10/10,000
535-89-7	Crimidine		100	100/10,000
538-07-8	Ethylbis(2-Chloroethyl)Amine	h	500	500
541-25-3	Lewisite	c, h	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	h	10	100
542-90-5	Ethylthiocyanate		10,000	10,000
555-77-1	Tris(2-Chloroethyl)Amine	h	100	100
556-61-6	Methyl Isothiocyanate	b	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	c	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	c	100	100/10,000
639-58-7	Triphenyltin Chloride		500	500/10,000
640-19-7	Fluoroacetamide	j	100	100/10,000
644-64-4	Dimetilan	d	1	500/10,000
675-14-9	Cyanuric Fluoride		100	100
676-97-1	Methyl Phosphonic Dichloride	b	100	100
696-28-6	Phenyl Dichloroarsine	h	1	500
732-11-6	Phosmet		10	10/10,000
760-93-0	Methacrylic Anhydride		500	500
786-19-6	Carbophenothion		500	500
814-49-3	Diethyl Chlorophosphate	h	500	500
814-68-6	Acrylyl Chloride	h	100	100
824-11-3	Trimethylolpropane Phosphite	h	100	100/10,000
900-95-8	Stannane, Acetoxytriphenyl-	g	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	h	100	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)
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	d	1	100/10,000
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	b	100	500
1327-53-3	Arsenous Oxide	h	1	100/10,000
1397-94-0	Antimycin A	c	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	c	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	h	100	100/10,000
2104-64-5	EPN		100	100/10,000
2223-93-0	Cadmium Stearate	c	1,000	1,000/10,000
2231-57-4	Thiocarbazine		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	h	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	c, g	500	500
2631-37-0	Promecarb	d, h	1	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	c, h	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)-	g	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		100	100
4104-14-7	Phosacetim		100	100/10,000
4170-30-3	Crotonaldehyde		100	1,000
4301-50-2	Fluometil		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	c, h	100	100/10,000
6923-22-4	Monocrotophos		10	10/10,000
7446-09-5	Sulfur Dioxide	l	500	500
7446-11-9	Sulfur Trioxide	b	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	b	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)
7631-89-2	Sodium Arsenate		1	1,000/10,000
7637-07-2	Boron Trifluoride		500	500
7647-01-0	Hydrogen Chloride (gas only)	l	5,000	500
7664-39-3	Hydrogen Fluoride		100	100
7664-41-7	Ammonia	l	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%)	l	1,000	1,000
7723-14-0	Phosphorus	b, h	1	100
7726-95-6	Bromine	l	500	500
7778-44-1	Calcium Arsenate		1	500/10,000
7782-41-4	Fluorine	k	10	500
7782-50-5	Chlorine		10	100
7783-00-8	Selenious Acid		10	1,000/10,000
7783-06-4	Hydrogen Sulfide	l	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	k	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	c, h	100	100/10,000
7791-23-3	Selenium Oxychloride		500	500
7803-51-2	Phosphine		100	500
8001-35-2	Camphochlor		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	b	500	500
10028-15-6	Ozone		100	100
10031-59-1	Thallium Sulfate	h	100	100/10,000
10102-18-8	Sodium Selenite	h	100	100/10,000
10102-20-2	Sodium Tellurite		500	500/10,000
10102-43-9	Nitric Oxide	c	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	h	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	h	100	100
13071-79-9	Terbufosh	h	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	h	100	500/10,000
17702-41-9	Decaborane(14)		500	500/10,000
17702-57-7	Formparanated	d	1	100/10,000
19287-45-7	Diborane		100	100
19624-22-7	Pentaborane		500	500
20830-75-5	Digoxin	h	10	10/10,000
20859-73-8	Aluminum Phosphide	b	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	h	500	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)
22224-92-6	Fenamiphos		10	10/10,000
23135-22-0	Oxamyl	d	1	100/10,000
23422-53-9	Formetanate Hydrochloride	d, h	1	500/10,000
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)-	d	1	100/10,000
26628-22-8	Sodium Azide (Na(N ₃))	b	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		100	100/10,000
58270-08-9	Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino) Carbonyl)Oxy)Imino)Pentanenitrile)-, (T-4)-	h	100	100/10,000
62207-76-5	Cobalt, ((2,2'-(1,2-Ethanediybis (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 table 302.4.

NOTES:

- This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.
- This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.
- The calculated TPQ changed after technical review as described in the technical support document.
- Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.
- Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).
- [Reserved]
- New chemicals added that were not part of the original list of 402 substances.
- Revised TPQ based on new or re-evaluated toxicity data.
- TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.
- The TPQ was revised after proposal due to calculation error.
- Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

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

Subpart A—General Information

Sec.

- 370.1 What is the purpose of this part?
- 370.2 Who do "you," "I," and "your" refer to in this part?
- 370.3 Which section contains the definitions of the key words used in this part?

Subpart B—Who Must Comply

- 370.10 Who must comply with the hazardous chemical reporting requirements of this part?
- 370.11 What specific criteria must be met for a hazardous chemical to qualify for relief from routine reporting requirements?
- 370.12 What hazardous chemicals must I report under this part?
- 370.13 What substances are exempt from these reporting requirements?
- 370.14 How do I report mixtures containing hazardous chemicals?

Subpart C—Reporting Requirements

- 370.20 What are the reporting requirements of this part?

How to Comply With MSDS Reporting

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Subpart D—Community Access to Information

- 370.60 How does a person obtain MSDS information about a specific facility?
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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 that provide 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 40 CFR 355.62. 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. When a defined word first appears in this part, it is printed with the initial letter capitalized.

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 Act of 1970 (OSHA) and regulations issued under that Act 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 the threshold level for that EHS—500 pounds (or 227 kg, approximately 55 gallons) or the Threshold Planning Quantity (TPQ), whichever is lower. Extremely hazardous substances and their TPQs are listed in appendices A and B of 40 CFR part 355.

(2) A hazardous chemical that is not an extremely hazardous substance 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 as follows:

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

(ii) For gasoline at a retail gas station, when stored in a tank entirely underground and in compliance with the Underground Storage Tank regulations at 40 CFR part 280, the threshold level is 75,000 gallons (for all grades of gasoline combined). For purposes of this part, retail gas station means a retail gasoline facility principally engaged in selling gasoline to the public and convenience stores engaged in selling gasoline to the public.

(iii) For diesel fuel at a retail gas station, when stored in a tank entirely underground and in compliance with the Underground Storage Tank regulations at 40 CFR part 280, the threshold level is 100,000 gallons.

(iv) For sand, gravel, and rock salt the threshold level is infinite. For purposes of this part, an infinite threshold level means that you do not have to comply with the reporting requirements of this part, except for § 370.10(b).

(v) For any chemical that is considered minimal hazard and minimal risk under § 370.11, the threshold level is infinite. For purposes of this part, an infinite threshold level means that you do not have to comply with the reporting requirements of this part, except for § 370.10(b).

(b) You also must comply with the reporting requirements of this part if OSHA and regulations issued under that Act require your facility to prepare or have available an MSDS for a hazardous chemical and if the LEPC requests that you submit an MSDS (and you have not already submitted an MSDS to the LEPC for that hazardous chemical), or if the LEPC, the SERC, or the fire department with jurisdiction over your facility requests that you submit Tier II information. For reporting in response to any such requests under this paragraph (§ 370.10(b)), the threshold level is zero. Tier II information is discussed in § 370.42. LEPC means the local emergency planning committee appointed by the State emergency response commission. SERC means the 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.

§ 370.11 What specific criteria must be met for a hazardous chemical to qualify for relief from routine reporting requirements?

(a) A hazardous chemical present at your facility that is not an EHS, a CERCLA hazardous substance, a toxic chemical listed in 40 CFR part 372 or a regulated substance listed under the Clean Air Act (CAA) Risk Management Program (RMP) in 40 CFR part 68 qualifies for the infinite threshold level under § 370.10(a)(2)(v), which provides for relief from routine reporting requirements, if the hazardous chemical meets each of the following specific criteria:

(1) The chemical has a minimal inherent hazard and presents a minimal physical or health risk, to individuals in the community beyond the site or sites on which the facility is located, and to emergency responders on-site, under normal conditions of production, use, or storage, or in a foreseeable emergency.

(2) The chemical has a minimal inherent hazard and presents a minimal risk, to the environment beyond the site or sites on which the facility containing the chemical is located.

(3) You have followed the notification requirements under paragraph (b) of this section.

(b) For a hazardous chemical present at your facility to qualify for the infinite threshold level under § 370.10(a)(2)(v), which provides for relief from routine reporting requirements, you must meet each of the following notification requirements:

(1) You must notify the appropriate SERC, LEPC and fire department of your assessment that the chemical meets the specific criteria in paragraph (a) of this section, and must notify them of the name of the chemical and conditions relevant to the assessment.

(2) You must follow the notification procedure described in this section one time, unless a change occurs that may affect whether the chemical continues to meet the criteria in paragraph (a) of this section. If such a change occurs, you must repeat the notification requirements of this paragraph. Until these notification requirements are met, you must report using the applicable threshold level under §§ 370.10(a)(2)(i) through (iv).

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

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

§ 370.13.) The EPA has not issued a list of hazardous chemicals subject to reporting under this part; a substance is a hazardous chemical, and required to have an MSDS, if it 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) If a hazardous chemical is present at your facility as part of a Mixture, you must report according to one of the following two options:

(1) Report the required information in reference to each component in the mixture that is a hazardous chemical.

(2) Report the required information in reference to the mixture itself.

(b) 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	Then to determine if the threshold level for that hazardous chemical is equaled or exceeded you must	And if the threshold level for that hazardous chemical is equaled or exceeded then you must
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 applying that particular mixture as a whole toward the threshold level for that mixture).	Report in reference to either: the EHS component—submit an MSDS (or list) for the EHS, as provided under § 370.30, and submit Tier I information for the EHS, as provided under § 370.40 or the mixture itself—submit an MSDS (or list) for the mixture, as provided under § 370.30, and submit Tier I information for the mixture, as provided under § 370.40.
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 in reference to either: the hazardous chemical component—submit an MSDS (or list) for the hazardous chemical, as provided under § 370.30, and submit Tier I information for the hazardous chemical, as provided under § 370.40 or the mixture itself—submit an MSDS (or list) for the mixture, as provided under § 370.30, and submit Tier I information for the mixture, as provided under § 370.40.

(c) To determine the quantity of a 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.

(d) For each specific mixture, the reporting option used must be consistent for both MSDS and inventory reporting, unless impracticable. 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 impracticable). MSDS reporting and inventory reporting are discussed in detail in subpart C of this part.

(e) If a hazardous chemical is present at your facility both by itself and as a

component in mixture(s), you must determine the total amount present to apply the threshold level. To calculate the total amount, add together the quantity in all mixtures, and all other quantities of the hazardous chemical present at your facility.

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 exceed the applicable threshold levels (threshold levels are in § 370.10). You must comply with this requirement by doing one of the following:

(1) Submit an MSDS for each hazardous chemical present at your facility above its applicable threshold level.

(2) Submit a list of all hazardous chemicals present at your facility that exceed applicable threshold levels. The hazardous chemicals on your list must be grouped by Hazard Category as defined under 40 CFR 355.62. The list must contain the chemical or common name of each hazardous chemical as provided on the MSDS.

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

§ 370.31 Do I have to update the information?

You must update the information in all of the following ways:

(a) Submit a revised MSDS after discovery of 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 hazardous chemical for which you become subject to these reporting requirements.

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

§ 370.32 To whom must I submit the information?

You must submit the required reporting information to the following entities:

(a) 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) Submit an MSDS requested by the LEPC, as provided in § 370.30(b), to the LEPC.

§ 370.33 When must I submit the information?

You must submit the required reporting information at the following times:

(a) 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) 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) 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 you must annually—by March 1—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, and is described in § 370.41. You may choose to report Tier II information, which is 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. The EPA publishes Tier I and Tier II Inventory Forms, which are 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.

Note to paragraph (b): Some States require Tier II information annually under State law.

(c) You should contact the SERC to determine State requirements for format and procedures regarding inventory reporting. If your State has a policy for electronic submittal of inventory information, you should obtain instructions from the SERC. You may also contact the SERC to obtain inventory forms specific to that State. You may obtain the most current versions of the EPA Tier I and Tier II forms, and instructions for completing the Tier I and Tier II forms, by contacting the National Center for Environmental Publications and Information (NCEPI) at 800/490-9198. The forms are also available on the Internet at www.epa.gov/ceppo/publications/.

§ 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 355.62. 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 submission is true, accurate, and complete by certifying the following: "I certify under penalty of law that I have personally examined and am familiar with the information submitted 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.

(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 greatest number of days that any single hazardous chemical within

each hazard category was present at your facility.

(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 related to the appropriate locations.

§ 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 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 submission is true, accurate, and complete by certifying the following: "I certify under penalty of law that I have personally examined and am familiar with the information submitted 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 provide the following information:

(1) The chemical name or the common name of the chemical as provided on the material safety data sheet, and the 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) An indication if any of these descriptors apply to the chemical: 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, the chemical name of each EHS in the mixture.

(4) An indication of which hazard categories apply to the chemical. The five hazard categories are defined in 40 CFR 355.62.

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

(8) A brief description of the precise location of the hazardous chemical at your facility. You may choose to attach a site plan with site coordinates indicated, a list of site coordinate abbreviations, or a description of dikes and other safeguard measures. Under EPCRA section 324 you may choose to withhold the location information regarding a specific chemical from disclosure to the public. 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, 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.* 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	Higher 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.* 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.* You must use the following codes to report storage conditions when you are reporting Tier II information:

Codes	Storage conditions
1	Pressure conditions
2	Ambient pressure.
3	Greater than ambient pressure.
4	Less than ambient pressure.
5	Temperature conditions
6	Ambient temperature.
7	Greater than ambient temperature.
8	Less than ambient temperature but not cryogenic.
9	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 each of the following:

- (a) Your State emergency response commission (SERC).
- (b) Your local emergency planning committee (LEPC).
- (c) The fire department with jurisdiction over your facility.

§ 370.45 When must I submit the inventory information?

You must report the required inventory information as follows:

- (a) Submit the required inventory information by March 1, each year (beginning in 1988 or beginning after your facility first becomes subject to this part), and 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) Submit Tier II information within 30 days of the receipt of such 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 such an MSDS.

(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's 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 stored at the facility—in an amount greater than 10,000 pounds—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's owner or operator in the following case: 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's 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's owner or operator to submit Tier II information. The owner or operator must submit 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 requested information available?

If a person makes a request under this subpart, the SERC or LEPC must make available the following information (except for confidential location information, which is discussed in § 370.64(b)):

(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.* When submitting MSDS reporting or inventory reporting information that requires you to provide the names of specific chemicals present at your facility, you may be able to withhold the name of a specific chemical from reporting, if that information 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. EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) contains detailed information on how to submit trade secrecy claims. 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.

(b) *Confidential location information.* If you are reporting Tier II information then you are required to provide the precise locations of specific chemicals present at your facility (Tier II information is described in § 370.42). You may request that the SERC or the LEPC not disclose to the public the location of any specific chemical required to be submitted as Tier II information. If you make such a request, the SERC or LEPC must not disclose the location of the specific chemical for which you made the request. If you use a Tier II form to report your inventory information, you can choose to report confidential location information with respect to a specific chemical on a Tier Two 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.

§ 370.65 Must I allow the local fire department to inspect my facility, and must I provide it 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 on-site inspection of your facility.

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

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