

CRS Report for Congress

The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary

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The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary

Summary

This report summarizes the Emergency Planning and Community Right-to-Know Act (EPCRA) and the major regulatory programs that mandate reporting by industrial facilities of releases of hazardous chemicals to the environment, as well as local planning to respond in the event of significant, accidental releases. The text is excerpted, with minor modifications, from the corresponding chapter of CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*, which summarizes 12 major environmental statutes.

The Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001-11050) was enacted in 1986 as Title III of the Superfund Amendments and Reauthorization Act (P.L. 99-499). In Subtitle A, EPCRA established a national framework for EPA to mobilize local government officials, businesses, and other citizens to plan ahead for chemical accidents in their communities. EPCRA required each state to create a State Emergency Response Commission (SERC), to designate emergency planning districts, and to establish local emergency planning committees (LEPCs) for each district. EPA is required to list extremely hazardous substances, and to establish threshold planning quantities for each substance. The law directs each facility to notify the LEPC for its district if it stores or uses any “extremely hazardous substance” in excess of its threshold planning quantity. LEPCs are to work with such facilities to develop response procedures, evacuation plans, and training programs for people who will be the first to respond in the event of an accident. EPCRA requires that facilities immediately report a sudden release of any hazardous substance that exceeds the reportable quantity to appropriate state, local, and federal officials.

Subtitle B directs covered facilities annually to submit information about the chemicals that they have present to the LEPC, SERC, and local fire department. In addition, manufacturers and other facilities designated by EPA must estimate and report to EPA annually on releases from their facilities of certain toxic chemicals to the land, air, or water. EPA must compile that data into a computerized database, known as the Toxics Release Inventory (TRI). Generally, all information about chemicals that is required to be reported to LEPCs, SERCs, or EPA is made available to the general public, but EPCRA authorizes reporting facilities to withhold the identity of a chemical if it is a trade secret. Citizens are given the authority to bring civil action against a facility, EPA, a governor, or an SERC for failure to implement EPCRA requirements.

Contents

Introduction	1
Overview	1
Subtitle A — Emergency Planning and Notification	1
Subtitle B — Reporting Requirements	2
Subtitle C — General Provisions	5
Trade Secrets	5
Information for Health Professionals	5
Right to Know	5
Enforcement	5
Chemical Transport	5
Other Provisions	5
Selected References	5

List of Tables

Table 1. Major U.S. Code Sections: Emergency Planning and Community Right-to-Know Act	6
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The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary

Introduction

The Emergency Planning and Community Right-to-Know Act (EPCRA) establishes requirements and a framework to ensure that the U.S. Environmental Protection Agency (EPA), state and local governments, and the private sector will work together to control and, if necessary, respond to releases of hazardous chemicals to the environment. This report describes key provisions of EPCRA. In addition, it provides several references for more detailed information about the act, and a table that cross-references sections of the *U.S. Code* with corresponding sections of the act. The report highlights key provisions rather than providing a comprehensive inventory of the act's numerous sections, and addresses authorities and limitations imposed by the statute, rather than the status of implementation or other policy issues.

Overview

The sudden, accidental release in December 1984 of methyl isocyanate in an industrial incident at the Union Carbide plant in Bhopal, India, and the attendant loss of thousands of lives and widespread injuries motivated many in Congress to support legislation to reduce the risk of chemical accidents in the United States. The Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001-11050) was enacted in 1986 as Title III of the Superfund Amendments and Reauthorization Act (P.L. 99-499). EPCRA established state commissions and local committees to develop and implement procedures for coping with releases of hazardous chemicals, and mandated annual reporting to government officials on environmental releases of such chemicals by the facilities that manufacture or use them in significant amounts. EPA facilitates planning, enforces compliance when necessary, and provides public access to information about environmental releases of toxic chemicals.

Subtitle A — Emergency Planning and Notification

EPCRA established a national framework for EPA to mobilize local government officials, businesses, and other citizens to plan ahead for possible chemical accidents in their communities. Subtitle A requires local planning to respond to sudden releases of chemicals that might occur in the event of a spill, explosion, or fire. It is intended to ensure that responsible officials will know what hazardous chemicals are used or stored by local businesses and will be notified quickly in the event of an accident.

Under Section 301, each state is required to create a State Emergency Response Commission (SERC), to designate emergency planning districts, and to establish

local emergency planning committees (LEPCs) for each district. Section 302 requires EPA to list extremely hazardous substances and to establish threshold planning quantities for each substance. Originally, Congress defined chemicals as “extremely hazardous substances” if they appeared on a list EPA published in November 1985 as Appendix A in “Chemical Emergency Preparedness Program Interim Guidance.” However, EPA has authority to revise the list, and the threshold quantities of chemicals. Based on listing criteria, the intent appears to be to include only chemicals in quantities that could harm people exposed to them for only a short period of time. The law directs each facility to notify the LEPC for its district if it stores or uses any “extremely hazardous substance” in excess of its threshold planning quantity.

Section 303 directs LEPCs to work with facilities handling specified “extremely hazardous substances” to develop response procedures, evacuation plans, and training programs for people who will be the first to respond in the event of an accident. Upon request, facility owners and operators are required to provide an LEPC with any additional information that it finds necessary to develop or implement an emergency plan.

Section 304 requires that facilities immediately report a sudden release of any “extremely hazardous substance” or any “hazardous substance” (a much broader category of chemicals defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)) that exceeds the reportable quantity to state, local, and federal officials.¹ Releases of a “hazardous substance” also must be reported to the National Response Center under CERCLA. (For more on CERCLA, see CRS Report RL31154, *Superfund: A Summary of the Law*, by Mark Reisch).

Subtitle B — Reporting Requirements

Subtitle B establishes various reporting requirements for facilities. The information collected may be used to develop and implement emergency plans, as well as to provide the public with general information about chemicals to which they may be exposed.

The Occupational Health and Safety Act of 1970 (OSHAct) requires most employers to provide employees with access to a material safety data sheet (MSDS) for any “hazardous chemical.” This “right-to-know” law for workers aims to ensure that people potentially exposed to such chemicals have access to information about the potential health effects of exposure and how to avoid them. EPCRA, Section 311, requires facilities covered by OSHAct to submit an MSDS for each “hazardous chemical” or a list of such chemicals to the LEPC, the SERC, and the local fire department. EPA has authority to establish categories of health and physical hazards and to require facilities to list hazardous chemicals grouped by such categories in their reports. An MSDS need only be submitted once, unless there is a significant

¹ Under CERCLA Section 102(a), a “hazardous substance” includes any “elements, compounds, mixtures, solutions, and substances which, when released into the environment may present a substantial danger to the public health or welfare or the environment.” Included in this definition are substances listed under the authority of any of the major environmental statutes (see CERCLA Section 101(14)).

change in the information it contains. An MSDS must be provided in response to a request by an LEPC or a member of the public. The Occupational Safety and Health Administration has defined “hazardous chemicals” in the *Code of Federal Regulations*, Title 29, at Section 1910.1200(c).²

EPCRA, Section 312, requires the same employers to submit annually an emergency and hazardous chemical inventory form to the LEPC, SERC, and local fire department. These forms must provide estimates of the maximum amount of the chemicals present at the facility at any time during the preceding year; estimates of the average daily amount of chemicals present; and the general location of the chemicals in the facility.³ Information must be provided to the public in response to a written request. EPA is authorized to establish threshold quantities for chemicals below which facilities are not required to report.

Section 313 mandates development of the Toxic Release Inventory (TRI), a computerized EPA database of “toxic chemical” releases to the environment by manufacturing facilities.⁴ It requires manufacturing facilities that manufacture, use, or process “toxic chemicals” to report annually to EPA on the amounts of each chemical released to each environmental medium (air, land, or water) or transferred off-site. EPA makes TRI data available in “raw” and summarized forms to the general public. The public may obtain specific information (e.g., about a particular manufacturing facility) by submitting a request in writing to EPA. EPA distributes written and electronic, nationwide and state-by-state summaries of annual data. Raw data and summaries also are available on the EPA and other websites.⁵

EPCRA, Section 313, generally requires a report to EPA and the state from each manufacturer with 10 or more employees and who either uses 10,000 pounds or manufactures or processes 25,000 pounds of any “toxic chemical” during the reporting year. However, EPA may adjust these thresholds for classes of chemicals or categories of facilities. On November 30, 1994, EPA exempted from standard

² EPCRA does not cover foods, food additives, or other substances regulated by the Food and Drug Administration; solids in a manufactured item to the extent exposure to people or the environment does not occur; substances used for personal or household purposes; substances used in research or hospitals; or substances used in routine agricultural operations.

³ EPCRA allows facilities to report aggregate amounts of chemicals with similar health and environmental effects. This is called “Tier I” information. However, chemical-specific information (“Tier II”) must be provided on request (under certain conditions) to an SERC, LEPC, fire department, or the public.

⁴ “Toxic chemicals” are substances that may sicken people who are exposed to them in relatively small amounts by eating, drinking, or breathing, or through skin absorption. The term “hazardous substance” is broader, including toxic chemicals, but also substances that are explosive, flammable, corrosive, or otherwise harmful.

⁵ See, for example, EPA’s Envirofacts, TOXNET operated by the National Library of Medicine, or Right-to-Know Net, a project of OMB Watch and the Unison Institute: respectively, [http://www.epa.gov/enviro/html/toxic_releases.html], visited Nov. 8, 2006; [<http://toxnet.nlm.nih.gov/cgi-bin/sis/htmlgen?TRI>], visited Nov. 8, 2006; and [<http://rtk.net/>], visited Nov. 8, 2006.

reporting requirements facilities that manufacture, process, or otherwise use up to 1 million pounds of a toxic chemical per year, if they would have less than 500 pounds of chemical releases per year to report (40 CFR 372.27). The agency reduced the threshold that triggers reporting requirements for releases of certain persistent, bioaccumulative, and toxic chemicals in a rule issued October 29, 1999 (64 *Federal Register* 58665-58753). A rule reducing the threshold for reporting releases of lead compounds was issued January 17, 2001 (66 *Federal Register* 4500-4547). The effective date of that rule was delayed 60 days until April 17, 2001 (66 *Federal Register* 10585, February 16, 2001).

EPCRA enumerates the following data reporting requirements for each covered chemical present at each covered facility:⁶

- whether it is manufactured, processed, or otherwise used, and the general category of use;
- the maximum amount present at each location during the previous year;
- treatment or disposal methods used; and
- amount released to the environment or transferred off-site for treatment or disposal.

EPCRA requires reporting by manufacturers, which the law defines as facilities in Standard Industrial Classification codes 20 through 39.⁷ The law authorized EPA to expand reporting requirements to additional industries. EPA promulgated a rule May 1, 1997, requiring reports on toxic releases from seven additional industrial categories, including some metal mining, coal mining, commercial electric utilities, petroleum bulk terminals, chemical wholesalers, and solvent recovery facilities (62 *Federal Register* 23834).⁸

The original statute specified 313 “toxic chemicals” or categories of chemicals for which reporting was required, but EPCRA gave EPA authority to add or delete chemicals from the list either on its own initiative, or in response to citizen petitions. EPA has removed more than 15 and added roughly 350 chemicals (or categories) to the original list. The listing criteria specified in Section 313(d)(2) authorize EPA to add a chemical when it is “known to cause or can reasonably be anticipated to cause”

- “significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site

⁶ Congress added data submission requirements for manufacturers and processors of toxic substances when it enacted the Pollution Prevention Act of 1990.

⁷ Standard Industrial Codes were changed to North American Industry Classification System codes on Mar. 21, 2003 (66 *Federal Register* 13872-13887).

⁸ Current regulations promulgated under EPCRA may be found at Title 40 in the Code of Federal Regulations, Part 372.

boundaries as a result of continuous, or frequently recurring, releases”;

- in humans — cancer, birth defects, or serious or irreversible chronic health effects; or
- “because of — i) its toxicity, ii) its toxicity and persistence in the environment, or iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this Section.”

Subtitle C — General Provisions

Subtitle C contains various general provisions, definitions, and authorizations.

Trade Secrets. Section 322 authorizes reporting facilities to withhold the identity of a chemical if it is a trade secret, and they follow procedures established by EPA.

Information for Health Professionals. Special provisions are made in Section 323 for informing health professionals of a chemical identity that has been withheld to protect confidential business information, if the information is needed to diagnose or treat a person exposed to the chemical.

Right to Know. Section 324 directs EPA, governors, SERCs, and LEPCs to make emergency response plans, MSDSs, lists of chemicals, inventory forms, toxic chemical release forms, and follow-up emergency notices available to the general public.

Enforcement. Section 325 establishes civil, administrative, and criminal penalties for noncompliance with mandatory provisions of the act. Citizens are given the authority to bring civil action against a facility, EPA, a governor, or an SERC by Section 326.

Chemical Transport. Chemicals being transported or stored incident to transport are not subject to EPCRA requirements, according to Section 327.

Other Provisions. Section 328 authorizes EPA to issue regulations. Definitions are provided in Section 329. Section 330 authorizes to be appropriated “such sums as may be necessary” to carry out this title.

Selected References

Gray, Peter L. *EPCRA: Emergency Planning and Community Right-to-Know Act*. Basic Practice Series. Chicago, IL, ABA Publishing, 2002. 156 p.

U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics. *2004 Toxics Release Inventory: Public Data Release*. Washington, DC, 2006. Available at [<http://www.epa.gov/tri/tridata/tri04/index.htm>], visited November 8, 2006.

Wolf, Sidney M. 1996. "Fear and Loathing about the Public Right To Know: The Surprising Success of the Emergency Planning and Community Right-to-Know Act." *Journal of Land Use & Environmental Law*, v. 11, n. 2, pp. 217-325.

Table 1. Major U.S. Code Sections: Emergency Planning and Community Right-to-Know Act
(42 U.S.C. 11001-11050)

42 U.S.C.	Section Title	Emergency Planning and Community Right-to-Know Act, P.L. 99-499, Title III
Subchapter I -	Emergency Planning and Notification	Subtitle A
11001	Establishment of state commissions, planning districts, and local committees	Sec. 301
11002	Substances and facilities covered and notification	Sec. 302
11003	Comprehensive emergency response plans	Sec. 303
11004	Emergency notification	Sec. 304
11005	Emergency training and review of emergency systems	Sec. 305
Subchapter II -	Reporting Requirements	Subtitle B
11021	Material safety data sheets	Sec. 311
11022	Emergency and hazardous chemical inventory forms	Sec. 312
11023	Toxic chemical release forms	Sec. 313
Subchapter III -	General Provisions	Subtitle C
11041	Relationship to other law	Sec. 321
11042	Trade secrets	Sec. 322
11043	Provision of information to health professions, doctors and nurses	Sec. 323
11044	Public availability of plans, data sheets, forms, and follow up notices	Sec. 324
11045	Enforcement	Sec. 325
11046	Civil actions	Sec. 326
11047	Exemption	Sec. 327
11048	Regulations	Sec. 328
11049	Definitions	Sec. 329
11050	Authorizations	Sec. 330