

# SARA Title III Sections 311 & 312 Emergency & Hazardous Chemical Inventory Reporting 40 CFR Part 370

Sections 311 and 312 of Title III of the Superfund Amendments & Reauthorization Act of 1986 ("SARA Title III") address emergency and hazardous chemical inventory reporting. The implementing regulations are codified in 40 CFR part 370. The regulations are intended to provide the public, local governments, fire departments and other emergency officials with information concerning the potential chemical risks in their communities. Over 6000 facilities in Michigan submit hazardous chemical inventories to the Michigan SARA Title III Program, Local Emergency Planning Committees (LEPCs), and local fire departments.

On November 3, 2008, **EPA published amendments** to the hazardous chemical inventory requirements in the Federal Register that took effect on December 3, 2008. The amendments codified existing policies and interpretations, re-wrote the regulations in plain language, removed the Tier One and Tier Two inventory forms and instructions from the regulations, and clarified the reporting of mixtures. The changes also include reporting the North American Industry Classification System (NAICS) code instead of the Standard Industrial Classification (SIC) code.

## Who Must Submit the Hazardous Chemical Inventory Report

These reporting requirements apply to any facility that must maintain a material safety data sheet (MSDS) in accordance with the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, 29 CFR

If your facility is not covered by OSHA, reporting is not required. HOWEVER, in the interest of emergency preparedness, you are urged to consider reporting all hazardous substances that meet the reporting threshold requirements.

1910.1200. The **owner or operator** must submit the hazardous chemical inventory report if a hazardous chemical present at the facility meets or exceeds the threshold.

Federal agencies were directed by Executive Order No. 12856, signed by President Clinton on August 3, 1993, to comply with all provisions of SARA Title III and the Pollution Prevention Act (PPA).

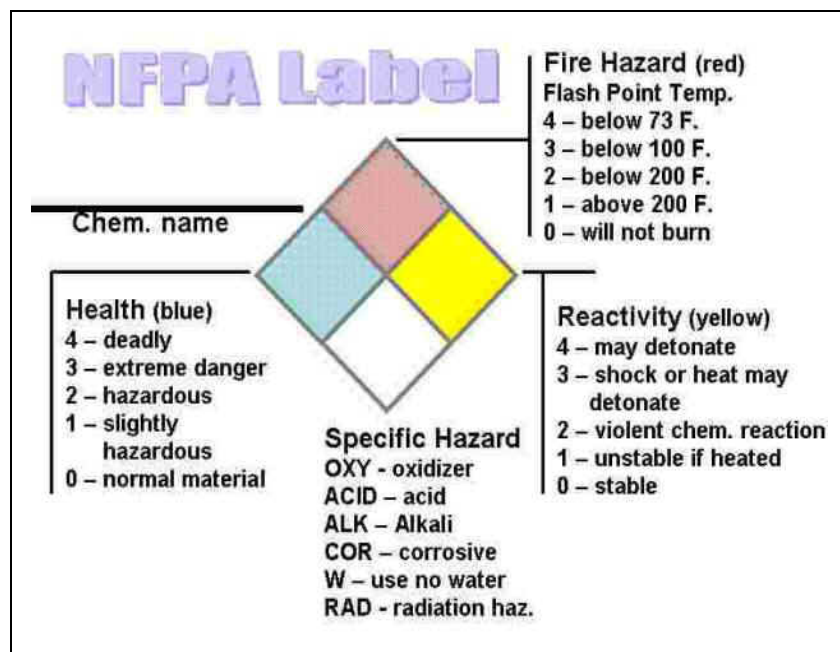
## What Hazardous Chemicals Are Included

*The criteria for chemicals to be included in the section 311 report are the same as the criteria for including chemicals in the section 312 report.*

Hazardous chemicals are those chemicals or substances stored or used in the work place for which OSHA requires employers to maintain MSDSs. Over 650,000 products have MSDSs required by OSHA. They are referred to here as "OSHA hazardous chemicals." There is *no list* of these OSHA hazardous chemicals. The OSHA hazardous chemicals must have an associated physical and/or health hazard as defined in the OSHA regulations found at 29 CFR 1910.1200(c).

## Physical and Health Hazards

The physical and health hazards will be described on the MSDS. Many non-hazardous substances also have MSDSs. Check your MSDS to see if the substance has associated physical and/or health hazards. If a substance is not hazardous according to the OSHA



definition, the MSDS should state that there are “no known hazards.” If the MSDS does not clearly describe the hazards, contact the manufacturer or importer of the substance for clarification. It is their responsibility to determine the hazards in accordance with OSHA standards and provide that information in the MSDS. Use the National Fire Protection Association (NFPA) numeric hazard rating and the hazard category description to help you determine whether or not an MSDS is describing a hazardous substance.

<b>Hazard Categories and Descriptions for Reporting Under Sections 311 and 312</b>	
These hazards are described in detail in the OSHA Hazard Communication Standard 29 CFR 1910 section 1200	
<i>Fire</i>	Flammable, combustible liquid, pyrophoric, and oxidizer. Flammable liquids have a flash point below 100 °F (37.8 °C). Flammable solids are solids that are liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or that can be ignited readily and when ignited burns vigorously and persistently. Combustible liquids have a flash point at or above 100 °F (37.8 °C) and below 200 °F (93.3 °C). A pyrophoric material can spontaneously ignite in air. An oxidizer initiates or promotes combustion in other materials.
<i>Sudden release of pressure</i>	Explosive, and compressed gas
<i>Reactive</i>	Unstable reactive, organic peroxide, and water reactive
<i>Immediate (acute)</i>	Highly toxic, toxic, irritant, sensitizer, corrosive, 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
<i>Delayed (chronic)</i>	Carcinogens 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

## Reporting Thresholds

The thresholds refer to the total amount of chemical on site, in storage and in process, at any one time. The minimum thresholds for reporting are:

- Extremely hazardous substance (EHS) = **500 pounds** or the **threshold planning quantity** (TPQ), whichever is less. The amount of an EHS at a facility (both pure and in mixtures) must be aggregated for purposes of threshold determination. Include the EHS in a mixture if it makes up at least 1% of the mixture, or 0.1% if the EHS is a carcinogen. EHSs and their TPQs are listed in Appendix A.
- Gasoline (all grades combined) at retail gas stations if all gasoline is stored in compliant underground storage tanks (UST) = **75,000 gallons**. The term gasoline includes gasohol which is composed of at least 90% gasoline and up to 10% ethanol.\*
- Diesel fuel (all grades combined) at retail gas stations if all diesel fuel is stored in compliant underground storage tanks = **100,000 gallons**. \*
- All other OSHA hazardous chemicals (except as stated in the next bullet) = **10,000 pounds**.
- The threshold for reporting in response to a request from the SERC, LEPC, or local fire department = **zero**. Regardless of the amount of chemical on site, you must submit a report if you are asked to do so by one of these agencies.
  - \* Retail gas stations are those that sell gasoline and/or diesel fuel primarily to the public for motor vehicle use on land. Tanks are compliant if during the full previous year they were in compliance with all applicable UST requirements in the Michigan Underground Storage Tank rules promulgated pursuant to part 211 of Public Act 451. The gasoline and diesel fuel thresholds do not apply to alternative fuels (except gasohol), aviation fuel, heating fuel, kerosene, or E-85.

The thresholds for most substances are in pounds. What if your substance is a liquid and you only know the number of gallons? You will need to convert gallons to pounds by using this formula:

$$\text{Specific gravity of product} \times 8.34 \text{ lb/gal (weight of water)} = \text{weight of product in lb/gal}$$

The specific gravity (also called the relative density) can be found in the "Physical & Chemical Properties" section of the MSDS. It is a unit-less number that tells how much the substance weighs relative to the weight of water. If the specific gravity is 1, the substance weighs the same as water. If it is less than 1, then the substance weighs less than water. The specific gravity is often reported as a range. Use the highest value in the calculation.

## **What Chemicals Are Excluded**

Section 311(e) of SARA Title III excludes the following substances from the hazardous chemical inventory reporting requirements in sections 311 and 312:

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

- 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.
- Any substance to the extent it is used 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.
- Any substance to the extent it is used in a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual.
- Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Hazardous waste that is covered by the Resource Conservation and Recovery Act (RCRA) is not regulated by OSHA and is therefore exempt. HOWEVER, in the interest of emergency preparedness, you are urged to consider reporting any hazardous wastes that meet the reporting threshold requirements.

## Hazardous Chemical Inventory Reports

Chemicals can be reported as pure substances, as mixtures, or as the total quantity of a chemical at the facility (adding together the amounts contained in mixtures and all other quantities of the chemical). Chemicals can also be grouped if appropriate. The reporting option should be consistent for both the initial and annual reports, unless this is not possible.

How you report your chemicals, depends on what format is of most value to the planners and responders. If you are reporting for a warehouse with 100 different products that all contain the same flammable base ingredient, report the base ingredient. If you have 5 different colors of enamel paint, group them and report enamel paint. If you have a plating solution that contains both sulfuric acid and nitric acid, report the plating solution as a mixture, and use the option to report the mixture ingredients on the Tier Two report.

### Initial (MSDS) Report

The purpose of the initial report required under Section 311 is to let state and local officials know that your facility recently acquired OSHA hazardous chemicals that are on site in amounts equal to or greater than the thresholds. This initial report is sometimes called the MSDS report.

Initial reports should be filed only for **new** substances that meet or exceed the threshold and that are not already included in the Tier Two report of hazardous chemicals.

The initial report consists of either copies of the MSDSs or a list of the OSHA hazardous chemicals. If you submit a list, then the list must identify the chemical or common name of each substance as it appears on the MSDS and the applicable hazard categories. Trade names should not be used.

### Annual (Tier Two) Report

The purpose of the annual report required under section 312 is to provide state and local officials and the public with specific information on hazardous chemicals that were present at your facility at any time during the **previous** calendar year at levels that equaled or exceeded the thresholds. The annual report is the Tier Two Emergency and Hazardous Chemical Inventory report, or Tier Two report.

*Michigan does not support the Tier One form for submittal of the hazardous chemical inventory report. If you submit a Tier One report, you will be asked by the SERC, LEPC, or local fire department to submit a Tier Two report instead. You will have 30 days in which to submit the requested report to all agencies.*

The Tier Two report is a certified report that contains specifics about the facility location, the owner or operator, emergency contacts, and other identifying information. It also describes each reportable chemical, and includes the amount that was on site during the previous year, where it was located, and how it was stored. Site maps and MSDSs can be attached to the Tier Two report to clarify the reported information.

### **Where to Submit the Reports**

The Initial and Annual reports must be submitted to ALL of the following agencies:

1. The Michigan SARA Title III Program – online in Tier II Manager™.
2. Your LEPC – online or in hard copy.
3. The fire department with jurisdiction over your facility – online or in hard copy.

The Michigan SARA Title III Program accepts all reports on behalf of the State Emergency Response Commission (SERC).

LEPCs and fire departments in the counties of Ingham, Kent, Oakland, Ottawa, and Wayne can receive the reports online. Addresses for LEPCs are available at [www.michigan.gov/deqsara](http://www.michigan.gov/deqsara).

### **Due Dates**

- The Initial (MSDS) report must be submitted within **3 months** after the chemical threshold is first met or exceeded.
- The Annual (Tier Two) report must be submitted annually between January 1 and **March 1**.
- The LEPC may ask a facility owner or operator to submit an MSDS for a hazardous chemical present at the facility. The owner or operator must provide the MSDS within **30 days** after receipt of the request.
- The SERC, LEPC, or fire department having jurisdiction over the facility may ask a facility owner or operator to submit Tier Two information. The owner or operator must provide the Tier Two information within **30 days** after receipt of the request.

## **Confidential and Trade Secret Information**

### **Confidential Location Information**

You may request that the SERC or LEPC not disclose to the public the location of any specific chemical required to be submitted in the Tier Two information. You may not withhold this information from the SERC, the LEPC, or the local fire department. The online reporting program provides an easy way for you to mark a chemical location as confidential. The chemical location includes the container type, temperature, pressure, and location description.

## **Trade Secrets**

You may be able to withhold the name of a specific chemical when submitting information under sections 311 or 312 if that chemical name is claimed as a trade secret. The requirements for withholding trade secret information are set forth in SARA Title III section 322 and implemented in 40 CFR part 350. If you are withholding the name of a specific chemical as a trade secret in accordance with trade secrecy requirements, you must report the generic class or category that is structurally descriptive of the chemical along with all other required information. You must also submit the withheld information to EPA and must adequately substantiate your claim. A form for substantiating the trade secret claims is available on the Internet at [www.epa.gov/oem](http://www.epa.gov/oem).

## **Online Reporting**

Michigan began using an online reporting program, Tier II Manager™, in April of 2007 so that the data would be more readily available to planners (LEPCs) and responders (fire departments). The online program allows facilities to manage their own data and enter updates at any time during the year. The Tier Two report is a snap-shot of the data that is certified annually as being true, accurate, and complete.

The online database was pre-loaded with data from facilities for which reports were submitted to the Michigan SARA Title III Program before January 2007. All Tier Two reports received for report years 2001 through 2005 were imported into the online database. Information from the most recent report was used to populate the editable database.

Online reporting information is available on the Michigan SARA Title III Program web site: [www.michigan.gov/deqsara](http://www.michigan.gov/deqsara). Click on the SARA Title III Hazardous Chemical Inventory link.

## **Tier Two Report Instructions**

Instructions for completing your Tier Two report online are included in two separate documents. It is important that everyone read **Online Reporting in Tier II Manager™** for data management instructions (such as adding or deleting facilities), frequently asked questions, and general Tier Two report instructions.

Line-by-line and screen-by-screen instructions that are specific to the online reporting program are the focus of the **Tier II Manager™ User Manual**. The complete user manual is available to you in the program. An excerpt from the manual that specifically addresses registration and signing in (including what to do when you forget your password) is available to you on the Michigan SARA Title III web site. Please read this before you register.

## **Community Right-to-Know Provisions**

Hazardous chemical inventory information is available to the public under the Community Right-to-Know provisions in SARA Title III. Requests can be made in writing to the LEPC or SERC as described below. The Michigan SARA Title III Program handles all information requests on behalf of the SERC. Addresses for the Michigan SARA Title III Program and the LEPCs are available on the Michigan SARA Title III Program web site. The public should not go directly to the facility or to the fire department with information requests.

A person may obtain an MSDS for a specific facility by writing to the LEPC and asking for it. If the LEPC does not have the MSDS, it must request the MSDS from the facility's owner or operator.

A person may request Tier Two information for a specific facility by writing to the SERC or LEPC and asking for it. The SERC or LEPC must respond to a request for Tier Two information within 45 days after receiving the request.

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

- The request is for hazardous chemicals in amounts greater than 10,000 pounds stored at the facility at any time during the previous calendar year, or
- The person making the request is a State or local official acting in his or her official capacity.

If neither of these conditions are met, the SERC or LEPC may request the information from the facility owner or operator if the request includes a general statement of need.

When responding to a request for Tier Two information, the SERC or LEPC must not disclose location information that has been designated confidential in the Tier Two report.

## **Local Fire Department Requests**

If you are the owner or operator of a facility that has submitted inventory information under sections 311 or 312, you must comply with the following two requirements upon request by the fire department with jurisdiction over your facility:

1. You must allow the fire department to conduct an on-site inspection of your facility; and
2. You must provide the fire department with information about the specific locations of hazardous chemicals at your facility.