

Environmental Protection Agency

**Thursday
October 12, 1989**

Part II

**Environmental
Protection Agency**

40 CFR Part 370

**Community Right-to-Know Reporting
Requirements; Interim Final Rule and
Supplemental Notice to Proposed Rule**

Notice published elsewhere in today's Federal Register.

II. Interim Final Rule

A. Extension of the Two-Year Thresholds for Manufacturers

By extending the current reporting thresholds for manufacturers, today's Interim Final Rule limits for an additional year the hazardous chemicals that must be reported by facilities in SIC codes 20 through 39 under sections 311 and 312 to those that are present at the facility in an amount equal to or greater than 10,000 pounds, or at which EHSs are present in an amount equal to or greater than 500 pounds (or 55 gallons) or the TPQ, whichever is lower. Accordingly, the following changes are made in 40 CFR 370.20: (1) the date specified at 40 CFR 370.20(b)(1)(ii) for reporting all hazardous chemicals present at a manufacturing facility in quantities between 10,000 and zero pounds for which an MSDS has not yet been submitted is changed from October 17, 1989 to October 17, 1990; (2) the amounts specified at 40 CFR 370.20(B)(2)(iii) for the third year of Tier I reporting for all hazardous chemicals present at a manufacturing facility during the preceding calendar year is changed to amounts equal to or greater than 10,000 pounds or extremely hazardous substances present at the facility in an amount equal to or greater than 500 pounds (or 55 gallons) whichever is lower; and (3) the date specified at new section, 40 CFR 370.20(b)(2)(iv), is March 1, 1991, for reporting under the current final threshold for all hazardous chemicals and all extremely hazardous substances present at a manufacturing facility during the preceding calendar year in amounts equal to or greater than zero pounds.

IV. Regulatory Analyses

A. Regulatory Impact Analysis

A Regulatory Impact Analysis is not necessary for today's Interim Final Rule because it makes no change in current

reporting thresholds but merely extends those currently in effect for one additional year. Costs and benefits associated with reporting requirements under the thresholds specified at 40 CFR 370.20 will remain unchanged.

B. Regulatory Flexibility Act Analysis

A Regulatory Flexibility Act Analysis is not necessary for the Interim Final Rule because the impact of the current third-year reporting thresholds was analyzed for the October 15, 1987 final rule and today's Interim Final Rule makes no change in the reporting thresholds or their impact on small businesses.

C. Paperwork Reduction Act

Office of Management and Budget approval is not necessary for this Interim Final Rule because it has no effect on the reporting burden imposed by 40 CFR 370.

List of Subjects in 40 CFR Part 370

Chemicals, Hazardous substances, Extremely hazardous substances, Intergovernmental relations, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: September 29, 1989.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, part 370 of subtitle J of title 40 of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for part 370 continues to read as follows:

Authority: 42 U.S.C. 11011, 11012, 11024, 11025, 11028, 11029.

2. Section 370.20 is amended by revising paragraph (b)(1)(ii) by redesignating paragraph (b)(2)(iii) as

paragraph (b)(2)(iv), by revising the newly redesignated paragraph (b)(2)(iv) and by adding a new paragraph (b)(2)(iii) to read as follows:

Subpart B—Reporting Requirements

§ 370.20 Applicability.

(b) * * *

(1) * * *

(ii) On or before October 17, 1990 for facilities in Standard Industrial Classification Codes 20 through 39 (manufacturing facilities) (or 2 years and 3 months after the facility first becomes subject to this Subpart for non-manufacturing facilities), for all hazardous chemical present at the facility between 10,000 and zero pounds for which MSDS has not yet been submitted.

(2) * * *

(iii) On or before March 1, 1990 for facilities in Standard Industrial Classification Codes 20 through 39 (manufacturing facilities) covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than 10,000 pounds or that are extremely hazardous substances present at the facility in an amount equal to or greater than 500 pounds (or 55 gallons) or the TPQ, whichever is less.

(iv) On or before March 1, 1991 for facilities in Standard Industrial Classification Codes 20 through 39 (manufacturing facilities) (or March 1 of the third year after the facility first becomes subject to this Subpart for non-manufacturing facilities), and annually thereafter, covering all hazardous chemicals present at the facility during the preceding calendar year in amounts equal to or greater than zero pounds or that are extremely hazardous substances present at the facility in an amount equal to or greater than 500 pounds (or 55 gallons) or the TPQ whichever is less.

* * *

[FR Doc. 89-23831 Filed 10-11-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 370

[FRL-3657-9]

Community Right-to-Know Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice to proposed rule; notice of availability.

SUMMARY: Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to establish reporting thresholds (i.e., quantities) for hazardous chemicals present at a facility below which facilities would not routinely have to comply with the reporting requirements specified in sections 311 and 312 of Title III. EPA previously established reporting thresholds for the first two years of reporting (52 FR 38344; October 15, 1987). EPA also promulgated zero thresholds in that rulemaking to become effective in the third year of reporting, but stated in the preamble that it would conduct further studies of all threshold alternatives and would propose final reporting thresholds before the beginning of the third year of reporting.

After completing its study of alternative thresholds, EPA published a Notice of Proposed Rulemaking (NPRM) proposing final reporting thresholds (54 FR 12992; March 29, 1989). Also as part of the NPRM, EPA proposed to eliminate the language in 40 CFR 370.20 that established the three-year phased-in reporting requirements established by the October 17, 1987 final rule, intending to subject all sectors of industry to the same final reporting thresholds on the same effective dates. In today's Supplemental Notice, EPA is clarifying and soliciting comments on its intent to establish, in the final rule on reporting thresholds, uniform effective dates for final reporting thresholds for all facilities required to submit reports under sections 311 and 312, regardless of the threshold option selected in the final rule. In this Supplemental Notice, EPA is using the term "final" rather than "permanent" threshold to avoid the misapprehension that no changes in the thresholds could ever be made in the future.

Also, EPA is today announcing the availability of the results of an analysis of reporting thresholds under State Right-to-Know laws.

Elsewhere in today's Federal Register, EPA is promulgating an Interim Final Rule extending, for manufacturing facilities, the reporting thresholds established for the first two years of reporting under the October 15, 1987 rule.

DATES: Comments must be received on or before November 13, 1989.

ADDRESSES: Comments may be mailed or delivered to the Superfund Docket clerk. Attn: Docket Number 300RR-IF, Superfund Docket Room 2427 (OS-240), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Please send four copies of comments.

Copies of materials relevant to this Supplemental Notice and to the March 29, 1989 NPRM are contained in the Superfund Docket—Room 2427, 401 M Street SW., Washington, DC 20460. The Docket may be inspected by appointment between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Kathleen Brody, Project Officer, Chemical Emergency Preparedness and Prevention Office, Office of Solid Waste and Emergency Response, OS-120, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202, or in the Washington, DC metro area and Alaska at (202) 479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's Supplemental Notice are listed in the following outline:

- I. Introduction
 - A. Statutory Authority
 - B. Background
 - C. Proposed Uniform Effective Dates for Compliance with Reporting Thresholds under SARA sections 311 and 312
- II. Notice of Availability.

I. Introduction

A. Statutory Authority

This Supplemental Notice is issued under sections 311 and 312 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499; 42 U.S.C. 11001 *et seq.*). Title III is the Emergency Planning and Community Right-to-Know Act of 1986.

B. Background

Section 311 of Title III applies to the owner or operator of a facility where there are hazardous chemicals present for which the owner or operator must prepare or have available a Material

Safety Data Sheet (MSDS) under the Hazard Communication Standards (HCS) (29 CFR 1910) promulgated under the Occupational Safety and Health Act of 1970. Under section 311 of Title III, the owner or operator of a facility must submit individual MSDSs, or a list of chemicals for which the facility is required to have MSDSs, to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and the local fire department. The HCS does not list specific chemicals; a "hazardous chemical," as defined in the HCS, is one that poses either a physical or health hazard. The tens of thousands of chemicals covered by the HCS include petroleum products, explosives, and carcinogens.

The HCS regulations were initially restricted to facilities in Standard Industrial Classification (SIC) codes 20 through 39, that is, the manufacturing sector. On August 24, 1987, however, the Occupational Safety and Health Administration (OSHA) revised the HCS to cover facilities in the non-manufacturing sector as well as facilities in the manufacturing sector (52 FR 51852). A challenge to the revised standards by several industrial groups resulted in a temporary stay for non-manufacturing facilities. On July 22, 1988, OSHA clarified that the HCS was in effect for non-manufacturing facilities as of June 24, 1988, except for the construction industry (53 FR 27679). On February 15, 1989, OSHA notified EPA that all provisions of the HCS were in effect as of January 30, 1989 for all segments of industry, including the construction industry (54 FR 6886).

For facilities in SIC codes 20 through 39, the initial MSDSs or lists were required to be submitted to the appropriate SERC, LEPC, and fire department by October 17, 1987. Non-manufacturers were required to submit their MSDSs or lists by September 24, 1988 (i.e., three months after they became subject to the HCS, as specified in 40 CFR 370.20(b)). Facilities in the construction industry were required to submit their MSDSs or lists by April 30, 1989. Thereafter, if a facility begins to use a chemical subject to the HCS in a quantity at or above the reporting threshold, or if a facility learns that its previously submitted MSDS is inaccurate for any reason, the facility must submit the new or correct information within three months to the appropriate SERC, LEPC, and the local fire department (40 CFR 370.21(c)).

Under section 312 of Title III, owners and operators covered by section 311 of Title III are required to submit



United States
Environmental Protection
Agency
(OS-120)
Washington, DC 20460

Official Business
Penalty for Private Use
\$300