

Local Emergency Planning Committee Handbook



Revised 2014
This edition supersedes all previous editions.
Developed 1994



Ensuring a safe and secure homeland for all North Dakotans

LOCAL EMERGENCY PLANNING COMMITTEE HANDBOOK

NORTH DAKOTA DEPARTMENT OF EMERGENCY SERVICES
DIVISION OF HOMELAND SECURITY
Bismarck, North Dakota



Revised: 2014
This edition supersedes all previous revisions.
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*This document can be found on the internet at www.nd.gov/des/

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I. INTRODUCTION

Welcome to membership on the Local Emergency Planning Committee (LEPC). This handbook was developed to provide general guidance on LEPC duties, responsibilities and organization.

In the wake of two widely publicized hazardous chemical releases in Bhopal, India and Institute, West Virginia (both in 1984), Congress enacted into law the [Superfund Amendments and Reauthorization Act \(SARA\) of 1986](#). Title III of SARA is the [Emergency Planning and Community Right-to-Know Act \(EPCRA\)](#). EPCRA is sometimes referred to as SARA Title III.

EPCRA establishes reporting, planning, and emergency notification requirements to help business, industry, and government reduce the danger hazardous and toxic chemicals pose to the public.

EPCRA's reporting requirements, known as Community Right-To-Know (CRTK) provisions, help to increase the public's knowledge about hazardous chemicals. This is done by requiring reporting by facilities which:

- store hazardous chemical in excess of specified quantities, or

The law also requires that communities develop chemical emergency response plans based on the information reported by facilities. The plans identify potential hazards, resources (manpower, facilities and equipment) and methods of using those resources to establish operational procedures for saving lives and protecting property.

What EPCRA did, was to mandate three broad requirements:

- Local communities and states must have a basic understanding of the risks posed by chemicals in their areas and be prepared to safely deal with emergencies involving these chemicals
- Citizens, health professionals, public interest groups, labor organizations, and the media must have access to the information.
- Industry is responsible for operating, as safely as possible, and gathering specific chemical information and reporting it to requesting agencies.

To ensure effective implementation of EPCRA, the N.D. Hazardous Chemicals Preparedness and Response Program was created. The [N.D. Disaster Act of 1985 § 37-17.1-07.1](#) describes the basic structure for this program. See [Attachment A](#) for complete text as it is applied in the N.D. Century Code. For an overview of the N.D. Hazardous Chemicals Preparedness and Response Program, see **page 9** of this document.

The State Emergency Response Commission (SERC) serves as the administering body for the N.D. Hazardous Chemicals Preparedness and Response Program with the Director of the N.D. Division of Homeland Security (NDHLS) serving as the SERC chairman. The SERC is responsible to provide coordination and oversight to the LEPCs. Additionally, the SERC is responsible to provide planning, training, exercising, and operational support to LEPCs.

SERC members are:

- Director, N.D. Division of Homeland Security, (Chair)
- N.D. Department of Agriculture
- N.D. Department of Health
- N.D. Department of Transportation
- N.D. Division of State Radio
- N.D. Highway Patrol
- N.D. Industrial Commission, Oil and Gas Division
- N.D. Insurance Commission
- N.D. Office of Management and Budget
- N.D. Office of the Adjutant General
- N.D. Office of the Attorney General
- N.D. Office of the Governor
- N.D. State Fire Marshal
- Workforce Safety and Insurance

Private Partner Representatives include:

- Agriculture Industry – Dakota Plains Cooperative
- Transportation Industry – Keitu Engineering, (representing Motor Carriers Association)
- Energy Industry – Tesoro Refinery, Mandan

The SERC provides:

- Technical assistance, planning guidance, plan evaluation, training, and exercise assistance;
- Information on potential sources of funding for LEPC activities;
- Computerized information management assistance;
- Contact with statewide and national industry groups that can provide technical information;
- Workshops that focus on EPCRA issues;
- Data on chemicals stored or being transported through your planning district; and
- Outreach information for the public about EPCRA.

Each county in North Dakota has been designated as a planning district with a Local Emergency Planning Committee (LEPC) appointed for each district. The LEPC is required to develop and maintain hazardous chemicals *and* emergency response plans for the respective district using information from facilities required to report under the "Right-to-Know" section of EPCRA. If a facility has a response plan of its own, appropriate information should be incorporated into the LEPC plan.

Each Local Emergency Manager is a member of their respective LEPC and will coordinate local emergency planning and operational response activities regarding all hazards (including hazardous materials). Neither the Emergency Manager nor LEPC direct the actual response. That is almost always a fire department or law enforcement responsibility.

The key to success of the EPCRA lies with the LEPC, local government officials, and facility management. Local people representing these organizations are the most familiar with their communities and in the best position to establish, maintain, review, and test procedures to mitigate emergency situations.

II. EPCRA DESCRIPTION BY SECTIONS

[EPCRA](#) is made up of § 301-330 of [Public Law 99-499](#) with § 302-313 and § 324, being most common for LEPCs. A copy of the law is in [Attachment B](#) of this handbook. The following is a brief description of these important sections:

SECTION 302

SECTION 302 – EXTREMELY HAZARDOUS SUBSTANCES (EHS). Facilities that have EHS present at or above an amount known as the Threshold Planning Quantity (TPQ) must report this to the SERC and the LEPC and local fire department that has jurisdiction over that facility. The report must be filed within 60 days of the substance arriving at the facility. The facility must designate a liaison person to coordinate EHS response planning with the LEPC. The LEPC must incorporate facility information into the response plan for the county. Section 302 substances are subject to Section 312 (Tier II) reporting as well.

The Environmental Protection Agency (EPA) designates which substances are EHS. Originally, there were 366 substances designated EHS and some 320 plus remain so designated. The best single source for EHS is the [EPA List of Lists](#) which contains not only Section 302 substances, but Section 304 substances, [Comprehensive Environmental Response, Compensation, and Liability Act \(CERCLA\)](#) substances, and Section 313 substances. The Section 302 notification is a one-time report and does not have to be refiled unless new substances are brought on the facility (even temporarily) or old ones are permanently removed.

SECTION 303

SECTION 303 MANDATES PLANNING. It requires the SERC to develop a comprehensive emergency response plan for the state. The LEPC is also required to prepare a comprehensive emergency response plan for the county which must be updated at least annually. Local changes in facilities, substances stored, etc., may indicate if more frequent reviews should be done. The county plan is to be submitted to the SERC for approval. Section 303 mandates nine areas that must be addressed by response plans. A detailed list of these eleven areas will be found on page 14.

SECTION 304

SECTION 304 ESTABLISHES REQUIREMENTS FOR ACCIDENTAL RELEASES of substances either on the Section 302 list or the CERCLA list. Under Section 304, substances on the Section 302 or CERCLA lists are assigned Reportable Quantities (RQ). Any accidental release of these substances at or above the RQ triggers reporting requirements to the LEPC, SERC, and [National Response Center \(NRC\)](#).

SECTION 305

SECTION 305 PROVIDES TRAINING FUNDS. These funds are to support training programs which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities with special emphasis on emergencies associated with hazardous chemicals.

SECTIONS 311 AND 312

SECTIONS 311 (Tier I) and 312 (Tier II) DEAL WITH FACILITIES. These sections require facilities to make annual reports to the SERC and LEPC regarding hazardous substances as defined by the [Occupational Safety and Health Act of 1970 \(OSHA\)](#). If OSHA requires a facility to post or have available for inspection a Material Safety Data Sheet (MSDS) for a substance, that substance is reportable under Sections 311 and 312 of EPCRA. Section 302 substances must also be listed on the Tier II report. North Dakota does not require Tier I reports because the Tier II provides the required information and more. Facilities may submit the Tier I but the Tier II report is required annually even if no changes at the reporting facility have been noted. The reports are due March 1 of each year and are for the previous calendar year. The facility must send copies of the report to the SERC, LEPC, and local fire department. Tier II reports, along with Section 302 reports, provide the information required for emergency planning and community Right-To-Know Act. The N.D. Hazardous Chemicals Preparedness and Response fee is based on chemicals reported on the Tier II form.

SECTION 313

SECTION 313 DEALS WITH THE ROUTINE RELEASE OF TOXIC OR HAZARDOUS SUBSTANCES INTO THE ENVIRONMENT. This is known as Toxic Release Inventory (TRI) and is part of a manufacturing or operating process. The quantity and type of release are known and the reporting threshold is based on the total quantity released during the year. Section 313 differs from Section 304; which deals only with accidental releases. North Dakota has very few facilities subject to Section 313 reporting and the LEPC will not receive the TRI report directly. Any LEPC that has concerns about TRI or wants more information about it should contact the N.D. Division of Homeland Security.

SECTION 322

SECTION 322 ALLOWS A FACILITY TO WITHHOLD the identity of a chemical if revealing it could compromise company operations. Section 322 has very narrow criteria and few North Dakota facilities are claiming exemption.

SECTION 324

SECTION 324 IS THE RIGHT-TO-KNOW PORTION OF EPCRA. It requires that Emergency Response Plans, MSDSs, and Tier II report information be made available to the general public. Each LEPC is required to publish annually a notice in local newspapers that emergency response plans, MSDSs, and Tier II forms have been submitted. The notice must state the location where such documents may be reviewed during normal business hours. Facilities that have submitted Tier II reports may request that the location, within the facility, of substances reported be kept confidential. Do not confuse this provision with the trade secret exemption in Section 322.

III. NORTH DAKOTA HAZARDOUS CHEMICALS PREPAREDNESS AND RESPONSE PROGRAM OVERVIEW, [NDCC 37-17.1-07.1](#)

This statute incorporates EPCRA into North Dakota State Law. There are 5 sections to the program:

A. Program Components: This section deals with organization. This statute establishes the SERC, designates the N.D. Division of Homeland Security (NDHLS) as the coordinating agency, appoints the NDHLS Director as SERC Chair, and mandates facility compliance with EPCRA.

B. Establishment of Funds: This section established the Tier II fee system. The fee, set by statute, is \$25 per reportable substance per facility with a maximum of \$475 per facility. There is no maximum per owner/operator in the case where one owner/operator controls more than one facility in the state. Family farmers and government entities are specifically exempted from the fee.

C. Recovery and Response Costs: This section sets the requirement that anyone who causes a release of a hazardous chemical is responsible for the cost of response and clean up.

D. Penalties and Fines: This section provides for fines and civil and criminal penalties for non-compliance with the law.

E. Enforcement: This section designates the Office of the Attorney General as the enforcement agency for the program.

IV. LEPC MEMBERSHIP

The LEPC, as is the case for the SERC, must have membership representation from a cross-section of the community it serves. LEPC members should come from the following categories and organizations.

- Elected Officials
 - County Commissioners
 - County Auditor
 - States Attorney
 - City Council Members
- Public Health and Safety
 - Law Enforcement
 - Emergency Management (Civil Defense)
 - Fire (major city, county, rural facility departments)
 - Health (hospital, Emergency Medical Technician (EMT))
 - Environmental (United States Department of Agriculture (USDA), Agricultural Soil Conservation Service (ASCS))
 - Transportation
- Media
 - broadcast
 - print
- Community Groups
 - service organizations
- Facility Owners and Operators

The LEPC should strive to get at least one member from each category on the committee. This may not be possible in all areas of the state. There is no minimum or maximum number of members specified by law or regulations.

Your goal should be to get a cross section of representation but not to have so many as to make the committee unwieldy or inertia bound.

Initial LEPC membership certification was done by the SERC on February 5, 1988. This certification was made permanent and extended to all future membership changes in the LEPCs. Membership changes are now considered certified by the SERC as soon as the LEPC action is completed. The LEPC must continue to submit membership changes to the SERC for information purposes.

LEPC term limits are not specified in EPCRA. A term of three to five years might be a good starting point. Since the LEPC will likely meet infrequently, terms of three to five years will give new members time to become accustomed to their roles before the term expires.

The LEPC is crucial to making EPCRA work. Membership on the committee should not be taken lightly. It is important to select the best people available to serve on the committee and to remove those who don't show up or perform.

<p>V. LEPC DUTIES AND RESPONSIBILITIES ARE:</p>
--

A.	Maintain the LEPC and keep the public informed of activities and accomplishments.
B.	Develop an emergency notification system.
C.	Develop, maintain, and exercise an emergency operations plan.
D.	Establish a system for data/information management.
E.	Manage training of LEPC members and manpower resources designated in the plan.

A little more detailed explanation of these major duties and responsibilities follows:

- A. Maintain the LEPC/keep the public informed:
1. Elect a chairman, vice-chairman, and secretary.
 2. Establish subcommittees and identify which membership category should be assigned to them. For example:
 - a. Emergency notification – fire and law
 - b. Public information – media and elected officials
 - c. Planning – Emergency Management, industry, fire, elected officials and any of the functional areas (law, fire, health, etc.)
 - d. Data management – auditor
 - e. Training – Emergency Management, fire, industry, any of the functional areas.

Not all LEPCs will want to establish formal subcommittees to deal with the areas addressed in the items above; therefore, sub-committees are not required. The LEPC needs to consider how it will handle the requirements (stated above) whether it be with single member portfolios, subcommittees, or any other means. Then select what is best for its own situation.

3. Establish meeting frequency. It is suggested to establish meetings at least two times a year; however, quarterly may be better. The LEPC must meet at least once annually for plan review. The SERC meets once a quarter.

During each meeting, agenda items should include status in

- Planning/Data Management
- Training
- Exercise
- Use of Funds
- Outreach

4. Follow Robert's Rules of Order when conducting meetings.
5. Keep minutes and records of all actions.
6. Provide public information:
 - a. Consider issuing news releases for both broadcast and print media regarding topics such as: meeting announcements, LEPC membership, plan/emergency notification procedures, EPA fact sheets, EPCRA and farmers, EPCRA updates, etc. Remember, under Section 324, you must publish annually the location where document review can be done by the general public during normal business hours.
 - b. Legal notices/official publication of minutes of LEPC meetings is not required. Hopefully, this information can be made available as a news item or public service announcement. Perhaps the media member(s) on the LEPC can be of help here.
7. Set objectives: What does the LEPC want to accomplish and by when? Once the original EPCRA mandates have been met, there are ongoing requirements to review the county emergency plan annually and to ensure training is done and the plan is exercised. Look at both short-term and long-term.

B. Develop an emergency notification system:

1. Who will be notified?
 - a. Local responders
 - b. General public
 - c. State officials

2. How – radio, TV, telephone, WebEOC, siren.
3. What information is to be supplied?
 - a. Suggested actions – health and safety measures
 - b. Seriousness of situation
 - c. Tips for personal and property protection
 - d. Chemical involved
 - e. What happened – explosion, spill, etc.
 - f. Who is impacted?

C. Develop, maintain, and exercise an emergency operations plan:

1. The following items should be addressed in the county Hazardous Materials Response Procedure. (* must be addressed in accordance with law.)
 - * a. Identify EHS facilities and transportation routes
 - * b. Response procedures to be followed by facility owners, emergency personnel and medical personnel.
 - * c. Notification procedures
 - * d. Description of emergency equipment in the community and at each facility and who controls it
 - * e. Evacuation plans
 - * f. Training programs
 - * g. Exercise methods and schedules
 - h. EHS facility Emergency Coordinators
 - * i. Designate a Community Emergency Coordinator (Emergency Manager)
 - j. Support needs
 - * k. Methods for determining release occurrence and population likely affected

The Local Hazardous Material Response Procedure (HMRP) is a supplement to your Local Emergency Operations Plan (LEOP) already developed by Emergency Management. Just add the things that are unique to Hazardous Material (Hazmat) response, while keeping the things that are common to both.

2. Some facilities will have response plans. They should be incorporated into the Local HMRP and must include the following:
 - a. Facility contacts
 - b. Facility sketch and location of chemicals/amounts
 - c. Procedures for containment of a release/spill
 - d. List of chemicals/hazards (fire & health)
 - e. Procedures for notification and reporting of spill/release

- f. Off-site evacuation procedures
- g. Emergency resources (equipment, supplies, and trained personnel)
- h. Facility location map

D. Date/Information Management:

1. Establish procedures and designate a coordinator for receipt and processing of Tier II reports and other information. Be prepared to utilize the appropriate data for planning.
2. Establish a process for addressing inquiries in accordance with the Right-to-Know Act.
 - a. Almost all information requested under the Right-to-Know Act will come from Tier II reports, so you need to have them filed in such a manner that they can be quickly accessed. It is important that you provide the information requested in a timely manner. The SERC can be a resource for response to the Right-to-Know Act requests also. If the request is for a facility you have no report for or the period requested is more than three years old, ask the SERC for assistance.
 - b. Documents dealing with money must be kept three years. The SERC keeps Tier II reports for three years, also. Since the SERC has Tier II reports for three years back, the LEPC has the option of keeping Tier II reports for the current year only or as far back as the committee wishes to keep them.

E. Training:

1. Designate a training manager. Make sure LEPC members take advantage of as many training opportunities as possible.
2. Provide the SERC with suggestions on future training needs and desires, such as first responder, operations, etc.

VI. LEPC ACTIVITIES

The LEPC must accomplish the following tasks annually:

- Review and update of county response plan
- Publish location during working hours where information may be reviewed by the public in accordance with the Right-to-Know Act. You can use both broadcast and print media for this
- Update Tier II report file.

Other things that are not required, but should be done annually include:

- Training review: What training was accomplished during the year? What needs to be done next year?
- Outreach review
- Money review: Have all Tier II fee system monies been expended? If not, how do we use the remainder? What do we need for next year or future years?
- Membership review: Are there changes needed in the membership, such as fewer or more members? Does anyone have a conflict that will prevent service for the coming year? Do we need to nominate any new members?

Federal law has mandated much for the LEPC to do. Many of these tasks require the development of something new and they impose a significant work load until the task is accomplished. However, once the mandates have been accomplished, the work load is significantly reduced, except for some maintenance, modifications, etc.

So what does the LEPC do on an ongoing basis, after the federal mandates are met? First, federal mandates changes. One duty the LEPC has on an ongoing basis is to keep abreast of any changes in the federal law and any changes there may be to the mandates. Perhaps the best way to accomplish this is to maintain

regular contact with the SERC through the EPCRA staff at N.D. Division of Homeland Security. The SERC also keeps the LEPCs apprised of any changes that may occur in the federal law or mandates, but some redundancy here doesn't hurt.

There are several other things the LEPC needs to consider on an ongoing basis:

A. Regular meetings

- Why are we meeting?
- What do we need to accomplish in planning, training, exercising, and outreach?
- What is the agenda?
- How often should we hold meetings?

B. Funds - Sources

1. County share of Hazardous Chemicals Preparedness and Response Program fee
2. Grants
 - Section 305
 - Hazardous Materials Emergency Preparedness (HMEP)

Section 305: Grant funding under Section 305 was mentioned on page 5. Some examples of how Section 305 money can be used include:

- Bringing in outside personnel, such as private industry or contractors, to conduct training or to bring in a training program.
- Procure state agency personnel to conduct training, such as the Fire Marshal's Office or ND Firefighters Association (NDFA) to train first responders.
- Training conducted by N.D. Division of Homeland Security for Emergency Managers and LEPC members on planning and exercising, as well as general Emergency Management topics.

- Section 305 training funds can be passed through to the counties for those wishing to do their own training.

HMEP: Another source of grant funding is from the Hazardous Materials Transportation Act through the Hazardous Materials Emergency Preparedness Grant (HMEP). The original name for this legislation was the Hazardous Materials Transportation Act of the United States (HMTUSA). Both names are for the same Act. HMEP provides grants for funding in the following areas:

- Update Hazard Mitigation Plans
- Update Local Emergency Operations Plans
- Conduct response capability assessment
- Conduct flow studies of hazardous chemicals passing through the LEPC area (see [Attachment E](#) for sample format)
- Study regional response capability and the need for Regional Response Team (RRT)
- Develop regional response plan
- Exercise Hazmat response capability, to include:
 - Coordination Capability
 - Response Plan
 - Individual Personnel
 - Equipment

More detailed information on assistance under Section 305 and HMEP is available by contacting the [N.D. Division of Homeland Security](#) or the [State Fire Marshall's](#) office.

C. Money – How to use it wisely!

The N.D. Hazardous Chemicals Preparedness and Response Program fee system (Tier II fees) that is split in half between the state and the counties must be used wisely. If we don't use it, and use it wisely, we may lose it. There are few restrictions placed on its use, other than it must be related to hazardous chemical preparedness and response, which is a broad category. Here are some examples of what the money can be used for:

- Computers and related equipment

- Communications equipment that can be used in emergency response such as cellular phones, pagers and radios
- Protective clothing for first responders
- Local outreach efforts
- Special exercises and training efforts
- Purchase county or facility response equipment and supplies such as over wrap barrels
- Reimburse LEPC members for administrative expenses incurred in their service

Some LEPCs may wish to carry over fees from more than one-year for the purpose of making larger purchases. You might want to consider making the proposed purchase a budget line item, either on a budget for the LEPC or on the county budget. This way it will not appear as if money is sitting unused. The SERC does not require the LEPC to have a budget, but some counties do.

D. Outreach

How much are we doing?

Are we doing enough?

Do we need to do more? If so, how and what?

Are we considering both the public and business and industry?

Is there an opportunity in the school system for outreach?

Some examples of basics you could cover include:

1. The purpose of the program – to protect lives, property, and the environment.
2. Facility and emergency operations planning requirements.
3. Reporting requirements, such as EHS Notification and Tier II reporting.
4. Dates: annually by March 1 for Tier II; within 60 days for EHS Notification.
5. Right-to-Know Act provisions.
6. Fee payment (The fact that a fee is required for Tier II reporting and how much it is.)
7. Spill reporting requirements and contacts.
8. The requirements for those who store EHS to designate a liaison person for the facility to coordinate response planning with the Local Emergency Manager.
9. Farmers are required to file EHS notification. They are not required to file Tier II reports for their farming operation.

E. Compliance

Are there any facilities that are not reporting?
Have we tried to identify any facilities?
If we know of any facilities, have we notified the SERC?
How can we better identify facilities that might be liable for reporting?

F. Use of Support Services

Have we made full use of the support the SERC can offer us?

- training
- facility identification
- outreach presentations
- grant requests
 - Section 305
 - HMEP

In addition to these general topics, additional items to consider include:

1. Have all the EHS facilities and EHS transportation routes in the county been identified? Are they in the response plan?
2. Have planning meetings been scheduled each year to plan the upcoming activities as well as to develop a schedule and agenda for other meetings.
3. The EPCRA program and fee system must be presented in the best light to facility owner/operators. The LEPC can play a major role in this ongoing effort. Consider having an EPCRA open house to allow for business people to know committee members and better understand how the program works and what it is designed to accomplish. In addition, consider scheduling a tour of selected business facilities for the LEPC, in order to promote understanding and enhance partnerships.
4. Consider publishing a newsletter that would go to all reporting facilities and appropriate public officials to include area schools.

Each LEPC should review its operation annually, making sure all the basic requirements are covered. If planning meetings are conducted each year

to ensure all requirements for the LEPC are reviewed and scheduled for completion.

These suggestions are some things to consider for meeting agenda topics and ongoing LEPC activities. Each LEPC will have different needs and will be at different stages of maturity and development. The list is not intended to be all inclusive or complete; rather, it is a point from which to start. Discard topics you don't need, use those you do, and as many as you think appropriate.

The SERC can be a resource for you if your LEPC is stuck on something, or if it seems you can't get things off the ground or out of a rut. Call N.D. Division of Homeland Security with any specific requests you might have and together we'll come up with a solution.

GLOSSARY OF TERMS AND ACRONYMS

ASCS	Agricultural Soil Conservation Service (Federal Agency)
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980
EHS.....	Extremely Hazardous Substance
EMT	Emergency Medical Technician
EPA.....	Environmental Protection Agency
EPCRA.....	Emergency Planning and Community Right to Know Act of 1986
HMEP.....	Hazardous Materials Emergency Preparedness
HMRP	Hazardous Material Response Procedure
HMTA.....	Hazardous Materials Transportation Act
HMTUSA.....	Hazardous Materials Transportation Act of the United States
LEOP	Local Emergency Operations Plan
LEPC.....	Local Emergency Planning Committee
MSDS.....	Material Safety Data Sheet
NRC	National Response Center (Federal Agency)
NDDDES	N.D. Department of Emergency Services (State Agency)
NDHLS.....	N.D. Department of Homeland Security (State Agency)
OSHA.....	Occupational Safety and Health Administration (Federal Agency)
PL 99-499	Public Law 99-499
RRT.....	Regional Response Team
RQ.....	Reportable Quantity
SARA	Superfund Amendments and Reauthorization Act of 1986; Title III of Sara is EPCRA
SARA TITLE III	Title III of SARA is EPCRA
SERC.....	State Emergency Response Commission
TPQ.....	Threshold Planning Quantity
TRANSCAER.....	Transportation Community Awareness and Emergency Response
TRI	Toxic Release Inventory
USDA.....	United State Department of Agriculture (Federal Agency)

NOTE:

1. *The names EPCRA, SARA and SARA TITLE III are often used interchangeably.*
2. *HMEP and HMTUSA are used interchangeably for the same act.*
3. *PL 99-499 – This is the legislation that codified EPCRA.*



State Legislation NDCC 37-17.1-07.1

Below is an excerpt of the 'N.D. Disaster Act of 1985' referenced from N.D. Century Code (NDCC) § 37-17.1 subsection 07.1 titled *the Hazardous Chemicals Preparedness and Response Program*. To obtain a complete copy of the N.D. Disaster Act, [click here](#).

37-17.1-07.1. Hazardous chemicals preparedness and response program.

1. a. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.

b. In conjunction with the state emergency response commission, the local emergency planning committees, as appointed by the Boards of Commissioners, and the local emergency management organizations, shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.

c. The director of the division of homeland security shall serve as the chairman of the state emergency response commission. In the absence of the chairman, the designated vice chairman shall serve as chairman. The state emergency response commission by vote will select the vice chairman to fulfill a two-year term. The chairman shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairman shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of homeland security.

d. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of homeland security as required by SARA title III, which shall establish and maintain the state repository for these reports.

2. a. There is created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the general assembly. Moneys in the fund shall be appropriated biennially to the division of homeland security for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.

b. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from

the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.

c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is *four hundred seventy-five dollars (\$475.00)*. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.

d. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.

e. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response programs to include training, exercising, equipment, response, and salaries.

f. "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.

g. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.

3. a. A person who causes a release, as defined in 40 CFR 355.20, of a hazardous chemical in excess of the reportable quantity of that chemical, as defined in 40 CFR 355.20, is liable for the response costs incurred by state or local hazardous chemical response personnel. The state agency, local agency, volunteer organization, or hazardous chemical response personnel, as identified in the state or local emergency operations plan, which undertakes a response action may recover those response costs in an action brought before a court of competent jurisdiction. If more than one jurisdiction, organization, or agency incurs response costs for the same hazardous chemical release or incident, those hazardous chemical response jurisdictions, agencies, organizations, or personnel may file a joint action and may designate one entity to represent the others in the action.

b. In the action to recover reasonable and necessary response costs, state agencies, local agencies, or volunteer organizations may include operational, administrative, personnel, and legal costs incurred from its initial response action up to the time that it recovers its cost. Reasonable and necessary costs are those additional costs incurred that are a result of the responsible party's failure or inability to implement or initiate the necessary actions to protect life, property, and the environment.

4. a. A person who violates any of the reporting, planning, or notification requirements outlined in the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C. 11001 et seq.], or fails to pay a state hazardous chemicals fee is subject to a civil fine of not more than fifteen thousand dollars for each separate offense. For purposes of this subdivision, each day of continued violation constitutes a separate offense. All civil fines collected under this subdivision must be deposited in the state general fund. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the civil fines established in this subdivision.

b. Any person who knowingly falsifies information or who intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of state or local government or state or local hazardous chemicals response personnel attempting to perform duties and functions in state or local emergency operations plans or complying with Public Law 99-499, SARA title III, is guilty of a class B misdemeanor. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.

5. If the director of the division of homeland security determines that a violation of this chapter has occurred, the director shall make all evidence available to the attorney general for use in any remedial action the attorney general's office determines appropriate, including injunctive relief. Nothing in this section may be construed to deny use of the remedies authorized under chapter 32-40.



FEDERAL LEGISLATION – PL 99-499
PUBLIC LAW 99 – 499

**TITLE III – EMERGENCY PLANNING AND COMMUNITY
RIGHT TO KNOW**

SEC. 300. SHORT TITLE; TABLE OF CONTENTS

- (a) SHORT TITLE – The title may be cited as the “Emergency Planning and Community Right-To-Know Act of 1986”
- (b) TABLE OF CONTENTS – The table of contents of this title is as follows:

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Subtitle A—Emergency Planning and Notification

SEC. 301. ESTABLISHMENT OF STATE COMMISSIONS, PLANNING DISTRICTS, AND LOCAL COMMITTEES.

(a) ESTABLISHMENT OF STATE EMERGENCY RESPONSE COMMISSIONS.

Not later than six months after the date of the enactment of this title, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 324, including Tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) ESTABLISHMENT OF EMERGENCY PLANNING DISTRICTS. Not later than nine months after the date of the enactment of this title, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multi-jurisdictional planning organizations as such districts. In emergency planning areas that involve more than one state, the state emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subtitle are within such emergency-planning districts.

(c) ESTABLISHMENT OF LOCAL EMERGENCY PLANNING COMMITTEES. Not later than 30 days after designation of emergency planning districts or 10 months after the date of the enactment of this title, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elects State and local officials, law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital, and transportation



personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 324, including Tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) **REVISIONS.** A State emergency response commission may revise its designation and appointments under subsections (b) and (c) as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.



SEC. 302. SUBSTANCES AND FACILITIES COVERED AND NOTIFICATION.

(a) SUBSTANCES COVERED.

(1) **IN GENERAL.** A substance is subject to the requirements of this subtitle if the substance is on the list published under paragraph (2).

(2) **LIST OF EXTREMELY HAZARDOUS SUBSTANCES.** Within 30 days after date of the enactment of this title, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) THRESHOLDS.

(A) At the time the list referred to in paragraph (2) is published the Administrator shall:

(i) Publish and interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) Initiate a rule making in order to publish final regulations establishing a threshold planning quantity for each substance of the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after the date of the enactment of this title, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for a substance.

(4) **REVISIONS.**—The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include



any short- or long-term health effect, which may result from a short-term exposure to the substance.

(b) **FACILITIES COVERED.**

(1) Except as provided in section 304, a facility is subject to the requirements of this subtitle if a substance on the list referred to in subsection (a) is present at the facility in an amount in excess of the threshold planning quantity established for each substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subtitle, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) **EMERGENCY PLANNING NOTIFICATION.** Not later than seven months after the date of the enactment of this title, the owner or operator of each facility subject to the requirements of this subtitle be reason of subsection (b) (1) shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subtitle.

(d) **NOTIFICATION OF ADMINISTRATOR.** The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subtitle by notifying the Administrator of:

(1) each notification received from a facility under subsection (c), and

(2) each facility designated by the Governor or State emergency response commission under subsection (b) (2).



SEC. 303 COMPREHENSIVE EMERGENCY RESPONSE PLANS.

(a) **PLAN REQUIRED.** Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after the date of the enactment of this title. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) **RESOURCES.** Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing each additional resources.

(c) **PLAN PROVISIONS.** Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subtitle, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 304).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such a release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the



requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) **PROVIDING OF INFORMATION.** For each facility subject to the requirements of this subtitle:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after the date of the enactment of this title, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) **REVIEW BY THE STATE EMERGENCY RESPONSE COMMISSION.** After completion of an emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) **GUIDANCE DOCUMENTS.** The national response team, as established pursuant to the National Contingency Plan as established pursuant to the National Contingency Plan as established under section 105 of the



Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S. C. 960 et seq.). shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after the date of the enactment of this title.

(g) **REVIEW OF PLANS BY REGIONAL RESPONSE TEAMS.** The regional response teams, as established pursuant to the National Contingency Plan as established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.



SEC. 304 EMERGENCY NOTIFICATION.

(a) TYPES OF RELEASES.

(1) 302(a) SUBSTANCE WHICH REQUIRES CERCLA NOTICE. If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereafter in this section referred to as ("CERCLA") (42 U.S.C. 9601 ET SEQ.), the owner or operator of the facility shall immediately provide notice as described in subsection (b).

(2) OTHER 302(a) SUBSTANCE. If a release of an extremely hazardous substance referred to in section 302(a) occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice as described in subsection (b), but only if the release:

(A) is not a federally permitted release as defined in section 101 (10) of CERCLA,

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner, which would require notification under section 103(a) of CERCLA.

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of one (1) pound shall be deemed that quantity the release of which requires notice as described in subsection (b).

(3) NON-302(a) SUBSTANCE WHICH REQUIRED CERCLA NOTICE. If a release of substance which is not on the list referred to in section 302(a) occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release required notification under section 103(a) of CERCLA, the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA, the owner or operator shall provide notice as described in subsection (b).



(B) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA:

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA.

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b).

(4) EXEMPTED RELEASES. This section does not apply to any release, which results in exposure to person solely within the site or sites on which a facility is located.

(c) **NOTIFICATION.**

(1) RECIPIENTS OF NOTICE. Notice required under subsection (a) shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committee, if established pursuant to section 310(c), for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) CONTENTS. Notice required under subsection (a) shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

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

(B) An indication of whether the substance is on the list referred to in section 302(a).

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



- (D) The time and duration of the release.
 - (E) The medium or media into which the release occurred.
 - (F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
 - (G) 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).
 - (H) The name and telephone number, of the person or persons to be contacted for further information.
- (c) **FOLLOW UP EMERGENCY NOTICE.** As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written follow up emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to
- (1) actions taken to respond to and contain the release,
 - (2) any known or anticipated acute or chronic health risks associated with the release, and
 - (3) where appropriate, advice regarding medical attention necessary for exposed individuals.
- (d) **TRANSPORTATION EXEMPTION NOT APPLICABLE.** The exemption provided in section 327 (related to transportation) does not apply to this section.



SEC. 305. EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS.

(a) EMERGENCY TRAINING.

(1) **PROGRAMS.** Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) **STATE AND LOCAL PROGRAM SUPPORT.** There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, \$5,000,000 for making grants to support programs of State and local government, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) **OTHER PROGRAMS.** Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) REVIEW OF EMERGENCY SYSTEMS.

(1) **REVIEW.** The Administration shall initiate, not later than 30 days after date of the enactment of this title, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 302(a) for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after such date of enactment, and issue a final report of findings and recommendations to the Congress not later than 18 months after such date of enactment. Such report shall be prepared in consultation with the States and appropriate Federal agencies.



(2) REPORT. The report required by this subsection shall include the Administrator's findings regarding each of the following:

- (A) The status of current technological capabilities to
 - (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances,
 - (ii) determine the magnitude and direction of the hazard posed by each release,
 - (iii) identify specific substances,
 - (iv) provide data on the specific chemical composition of such release, and
 - (v) determine the relative concentrations of the constituent substances

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) RECOMMENDATIONS. The report required by this subsection shall also include the Administrator's recommendations for--

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.



Subtitle B—Reporting Requirements

SEC. 311. MATERIAL SAFETY DATA SHEETS.

(a) BASIC EQUIPMENT.

(1) SUBMISSION OF MSDS OR LIST. The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act (15 U.S.C. 651 et seq.) shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

- (A) The appropriate local emergency planning committee.
- (B) The State emergency response commission.
- (C) The fire department with jurisdiction over the facility.

(2) CONTENTS OF LIST.

(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act, grouped in categories of health and physical hazards set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under the Act by requiring



information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) **TREATMENT OF MIXTURES.** An owner or operator may meet the requirements of this section with respect to a hazardous chemical, which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture, which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) **TRESHOLDS.** The Administrator may establish threshold quantities for hazardous chemicals below, which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) **AVAILABILITY OF MSDS ON REQUEST.**

(1) **TO LOCAL EMERGENCY PLANNING COMMITTEE.** If an owner or operator of a facility submits a list of chemicals under subsection (a) (1), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) **TO PUBLIC.** A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 324. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 324.

(d) **INITIAL SUBMISSION AND UPDATING.**

(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of:

(A) 12 months after date of the enactment of this title, or



(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a), a revised sheet shall be provided to such person.

(e) **HAZARDOUS CHEMICAL DEFINED.** For the purpose of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(C) of title 29 of the code of federal regulations, except that such term does not include the following:

(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 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.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) 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.



SEC. 312. EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY FORMS.

(a) BASIC REQUIREMENT.

(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under the Act shall prepare and submit an emergency and hazardous chemical inventory (hereafter in this title referred to as the "inventory form") to each of the following:

- (A) The appropriate local emergency planning committee.
- (B) The State emergency response commission.
- (C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d) (1) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier ii information (as described in subsection (d) (2) to the recipients in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical, which is a mixture by doing one of the following:

- (A) Providing information on the inventory form on each element or compound in the mixture, which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.
- (B) Providing information on the inventory form on the mixture itself.

(b) **THRESHOLDS.** The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.



(c) **HAZARDOUS CHEMICALS COVERED.** A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 311.

(d) **CONTENTS OF FORM.**

(1) TIER I INFORMATION.

(A) **AGGREGATE INFORMATION BY CATEGORY.** An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under the Act.

(B) **REQUIRED INFORMATION.** The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year..

(iii) The general location of hazardous chemicals in each category.

(C) **MODIFICATIONS.** For purposes of reporting information under this paragraph, the Administrator may:

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970, and regulations promulgated under the Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) TIER II INFORMATION. An inventory form shall provide the



following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e):

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the hazardous chemical present at the facility at any time during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324.

(e) **AVAILABILITY OF TIER II INFORMATION.**

(1) **AVAILABILITY TO STATE COMMISSIONS, LOCAL COMMITTEES, AND FIRE DEPARTMENTS.** Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d), to the person making the request. Any such request shall be with respect to a specific facility.

(2) **AVAILABILITY TO OTHER STATE AND LOCAL OFFICIALS.** A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) **AVAILABILITY TO PUBLIC.**



(A) **IN GENERAL.** Any person may request a State emergency response commission or local emergency planning committee for Tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) **AUTOMATIC PROVISION OF INFORMATION TO THE PUBLIC.** Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 324. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 324 to the person making the request.

(C) **DISCRETIONARY PROVISION OF INFORMATION TO PUBLIC.** In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section 324 to the person.

(D) **RESPONSE IN 45 DAYS.** A State emergency response commission or local emergency planning committee shall respond to a request for tier II information upon this paragraph no later than 45 days after the date of the request.

(f) **FIRE DEPARTMENT ACCESS.** Upon request to an owner or operator of a



facility, which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) **FORMAT OF FORMS.** The Administrator shall publish a uniform format for inventory forms within three months after date of the enactment of this title. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.



SEC. 313. TOXIC CHEMICAL RELEASE FORMS.

(a) **BASIC REQUIREMENT.** The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) **COVERED OWNERS AND OPERATORS OF FACILITIES.**

(1) **IN GENERAL.**

(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Code 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) in excess of the quantity of that toxic chemical established under subsection (f) during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section

(i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce-

(l) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or



(ii) as part of an article containing the toxic chemical.

(2) **DISCRETIONARY APPLICATION TO ADDITIONAL FACILITIES.**

The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administration deems appropriate.

(c) **TOXIC CHEMICAL COVERED.** The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, title "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (including any revised version of the list as may be made pursuant to subsection (d) or (e)).

(d) **REVISIONS BY ADMINISTRATOR.**

(1) **IN GENERAL.** The Administrator may by rule add or delete a chemical from the list described in subsection (c) at any time.

(2) **ADDITIONS.** A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can be reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans:

- (i) cancer or teratogenic effects, or
- (ii) serious or irreversible:



- i. reproductive dysfunctions,
- ii. neurological disorders,
- iii. heritable genetic mutations, or
- iv. other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, 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. The number of chemicals included on the list described in subsection (c) on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles of laboratory test, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) **DELETIONS.** A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) **EFFECTIVE DATE.** Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(f) PETITIONS.



(1) In general. Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A) or (B) of subsection (d)

(2). Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rule making to add or delete the chemical to the list, in accordance with subsection (d) (2) or (d) (3).

(B) Publish an explanation of why the petition is denied.

(2) GOVERNOR PETITIONS. A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d) (2). In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator--

(A) initiates a rule making to add the chemical to the list, in accordance with subsection (d) (2), or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d) (2), for adding a chemical to the list.

(f) **THRESHOLD FOR REPORTING.**

(1) TOXIC CHEMICAL THRESHOLD AMOUNT. The threshold amounts for purposes of reporting toxic chemicals under this section are as follow:

(A) With respect to a toxic chemical used as a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility:



(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) REVISIONS. The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) **FORM.**

(1) INFORMATION REQUIRED. Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall:

(A) provide for the name and location of, and principal business activities at, the facility

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.



(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each waste stream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that waste stream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) **USE OF AVAILABLE DATA.** In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) **USE OF RELEASE FORM.** The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 324(a), to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) **MODIFICATIONS IN REPORTING FREQUENCY.**

(1) **IN GENERAL.** The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemical or a category of facilities.

(C) A specific toxic chemical.



(D) A specific facility.

(2) REQUIREMENTS. A modification may be made under paragraph (1) only if the Administrator:

(A) makes a finding that the modification is consistent with the provisions of subsection (h), based on:

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of title 5, United State Code.

(3) DETERMINATIONS. The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release form has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-YEAR REVIEW. Any modifications made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.



(5) **NOTIFICATION TO CONGRESS.** The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such modification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months after the date of such notification.

(6) **JUDICIAL REVIEW.** In any judicial review of a rule making which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) **APPLICABILITY.** A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) **EFFECTIVE DATE.** Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) **EPA MANAGEMENT OF DATA.** The Administrator shall establish and maintain in a computer database a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) **REPORT.** Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.



(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) **MASS BALANCE STUDY.**

(1) **IN GENERAL.** The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after the date of the enactment of this title.

(2) **PURPOSES.** The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions, thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations, promulgated under laws other than this title.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) **INFORMATION COLLECTION.**

(A) The Administrator shall acquire available mass balance information from States, which currently conduct (or during the 5 years after the date of enactment of this title initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass



balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) **MASS BALANCE DEFINITION.** For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component or a commercial product or byproduct.



Subtitle C—General Provisions

SEC. 321. RELATIONSHIP TO OTHER LAW.

(a) **IN GENERAL.** Nothing in this title shall:

(1) preempt any State or local law.

(2) except as provided in subsection (b), otherwise affect any State or local law or the authority of any state or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under Federal law.

(b) **EFFECT ON MSDS REQUIREMENTS.** Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 311. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the state or locality considers appropriate.



SEC. 322 TRADE SECRETS.

(a) AUTHORITY TO WITHHOLD INFORMATION.

(1) GENERAL AUTHORITY.

(A) With regard to a hazardous chemical, and extremely hazardous substance, or a toxic chemical, any person required under section 303 (d) (2), 303 (d) (3), 311, 312, or 313 to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name, and other specific identification as defined in regulations prescribed by the Administrator under subsection (c), if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substances, or toxic chemical (as the case may be).

(2) REQUIREMENTS.

(A) A person is entitled to withhold information under paragraph (1) if such person:

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b).

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b), including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A) (iii), a person withholding information under this subsection may:

(i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information



which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) **LIMITATION.** The authority under this subsection to withhold information shall not apply to information, which the Administrator has determined, in accordance with subsection (c), is not a trade secret.

(b) **TRADE SECRET FACTORS.** No person required to provide information under this title may claim that the information is entitled to protection as a trade secret under subsection (a) unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentially agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) **TRADE SECRET REGULATIONS.** As soon as practicable after the date of enactment of this title, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b) (4), such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in *United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Aucther*.

(c) **PETITION FOR REVIEW.**



(1) IN GENERAL. Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical, which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) INITIAL REVIEW. Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a) (2) and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) FINDING OF SUFFICIENT ASSERTIONS.

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimant may seek judicial review of the determination.

(4) FINDING OF INSUFFICIENT ASSERTIONS.



(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(d) **EXCEPTION FOR INFORMATION PROVIDED TO HEALTH PROFESSIONALS**
Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 323.

(g) **PROVIDING INFORMATION TO THE ADMINISTRATOR; AVAILABLE TO THE PUBLIC.** Any information submitted to the Administrator under subsection (a) (2) or subsection (d) (3) (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, United States Code, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title.

(h) **INFORMATION PROVIDED TO STATE.** Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a) (2) and subsection (d) (3).

(i) **INFORMATION OF ADVERSE EFFECTS.**



(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 301 shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 313(j) and is provided to any person requesting information about such toxic chemical.

(j) **INFORMATION PROVIDED TO CONGRESS.** Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this title shall be made available to the duly authorized committee of the Congress upon written request by such a committee.



SEC. 323 PROVISION OF INFORMATION TO HEALTH PROFESSIONALS, DOCTORS, AND NURSES.

(a) **DIAGNOSIS OR TREATMENT BY HEALTH PROFESSIONAL.** An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d). The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that:

- (1) the information is needed for purposes of diagnosis or treatment of an individual,
- (2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and
- (3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly, provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(b) **MEDICAL EMERGENCY.** An owner or operator of a facility which is subject to the requirements of section 311, 312, or 313 shall provide a copy of a material safety data sheet, an inventory form, or toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that:

- (1) a medical emergency exists,
- (2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and



- (3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or toxic chemical release form under section 322 when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) PREVENTATIVE MEASURES BY LOCAL HEALTH PROFESSIONALS.

(1) PROVISIONS OF INFORMATION. An owner or operator of a facility subject to the requirements of section 311, 312, and 313 shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist):

(A) who is a local government employee or a person under contract with the local government and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d).

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 322 when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d).

(2) WRITTEN STATEMENT OF NEED. The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.



(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) **CONFIDENTIALITY AGREEMENT.** Any person obtaining information under subsection (a) or (c) shall, in accordance with such subsection (a) or (c), be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) **REGULATIONS.** As soon as practicable after the date of the enactment of this title, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection (a) and (c) and the confidentiality agreement under subsection (d).



SEC. 324 PUBLIC AVAILABILITY OF PLANS, DATA SHEETS, FORMS, AND FOLLOWUP NOTICE.

(a) **AVAILABILITY TO PUBLIC.** Each emergency response plan, material safety data sheet, list described in section 311 (a) (2), in inventory form, toxic chemical release form, and follow-up emergency notice shall be made available to the general public, consistent with section 322, during normal working hours at a location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 312, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 312 (d) (2) to be contained in an inventory form as tier II information.

(b) **NOTICE OF PUBLIC AVAILABILITY.** Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that follow-up emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form or follow-up notice may do so at the location designated under subsection (a).



SEC. 325 ENFORCEMENT.

(a) **CIVIL PENALTIES FOR EMERGENCY PLANNING.** The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 302 (b) (2) to comply with section 302 (c) and section 303 (d). The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

(b) **CIVIL AND CRIMINAL PENALTIES FOR EMERGENCY NOTIFICATION.**

(1) **CLASS I ADMINISTRATIVE PENALTY.**

(A) A civil penalty of not more than \$25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 304.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) **CLASS II ADMINISTRATIVE PENALTY.** A civil penalty of not more than \$25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of violation of the requirements of section 304. In the case of a second or subsequent violation the amount of such penalty may be not more than \$75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16 of the Toxic Substances Control Act. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.



(3) **JUDICIAL ASSESSMENT.** The Administrator may bring action in the United States District court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 304. In the case of a second or subsequent violation, the amount of such penalty may not be more than \$75,000 for each day during which the violation continues.

(4) **CRIMINAL PENALTIES.** Any person who knowingly and willfully fails to provide notice in accordance with section 304 shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than \$50,000 or imprisoned for not more than five years, or both).

(c) CIVIL AND ADMINISTRATIVE PENALTIES FOR REPORTING REQUIREMENTS.

(1) Any person (other than a government entity) who violates any requirement of section 312 or 313 shall be liable to the United State for a civil penalty in an amount not to exceed \$25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 311 or 323 (b), and any person who fails to furnish to the Administrator information required under section 323 (a) (2) shall be liable to the United States for a civil penalty to an amount not to exceed \$10,000 for each violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) CIVIL, ADMINISTRATIVE, AND CRIMINAL PENALTIES WITH RESPECT TO TRADE SECRETS.

(1) **CIVIL AND ADMINISTRATIVE PENALTY FOR FRIVOLOUS CLAIMS.** If the Administrator determines:



(A) (i) under section 322 (d) (4) that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 322 (d) (3) (A), that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous, the trade secret claimant is liable for a penalty of \$25,000 per claim. The Administrator may assess the penalty by administrative order or may bring action in the appropriate district court of the United States to assess and collect the penalty.

(2) **CRIMINAL PENALTY FOR DISCLOSURE OF TRADE SECRET INFORMATION.** Any person who knowingly and willfully divulges or discloses any information entitle to protection under section 323 shall, upon conviction, be subject to a fine of not more than \$20,000 or to imprisonment not to exceed one year, or both.

(e) **SPECIAL ENFORCEMENT PROVISION FOR SECTION 323.** Whenever any facility owner or operator required to provide information under section 323 to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 323.

(f) **PROCEDURES FOR ADMINISTRATIVE PENALTIES.**

(1) Any person against whom a civil penalty is assess under this section may obtain review thereof in the appropriate district court of the United States by filing notice of appeal in each court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fail to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction, to hear and decide any such action. In hearing such action,



the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.



SEC. 326 CIVIL ACTIONS.

(a) AUTHORITY TO BRING CIVIL ACTIONS.

(1) **CITIZEN SUITS.** Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a follow up emergency notice under section 304 (c).

(ii) Submit a material safety data sheet or a list under section 311 (a)

(iii) Complete and submit an inventory form under section 312 (a) containing tier I information as described in section 312 (d) (1) unless such requirement does not apply by reason of the second sentence of section 312 (a) (2).

(iv) Complete and submit a toxic chemical release form under section 313 (a).

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 312 (g).

(ii) Respond to a petition to add or delete a chemical under section 313 (e) (1) within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 313 (g).

(iv) Establish computer database in accordance with section 313 (j).

(v) Promulgate trade secret regulations under section 322 (c).

(vi) Render a decision in response to a petition under section 322 (d) within 9 months after receipt of the petition.



(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 324 (a).

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312 (e) (3) within 120 days after the date of receipt of the request.

(2) STATE OR LOCAL SUITS.

(A) Any state or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 302 (c).

(ii) Submit a material safety data sheet or a list under section 311 (a).

(iii) Make available information requested under section 311 (c).

(iv) Complete and submit an inventory form under section 312 (a) containing tier I information unless such requirement does not apply by reason of the second sentence of section 312 (a) (2).

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 303 (d) or for failure to submit tier II information under section 312 (e) (1).

(C) Any State may commence civil action against the Administrator for failure to provide information to the State under section 322 (g).

(b) VENUE.

(1) Any action under subsection (a) against the owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.



(2) Any action under subsection (a) against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) **RELIEF.** The district court shall have jurisdiction in action brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) **NOTICE.**

(1) No action may be commenced under subsection (a) (1) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a) (1) (B) or (a) (1) (C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) **LIMITATION.** No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) **COSTS.** The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing of substantially prevailing party whenever the court determines such an award is appropriate. The court may, if temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedures.

(g) **OTHER RIGHTS.** Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement of to seek any other relief (including relief against the Administrator or a State agency).



(h) **INTERVENTION.**

(1) BY THE UNITED STATES. In any action under this section the United States or the State, or both, if not party, may intervene as a matter of right.

(2) BY PERSONS. In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator of the State shows that the person's interest is adequately represented by existing parties in the action.



SEC. 327 EXEMPTION.

Except as provided in section 304, this title does not apply to the transportation, including the storage incident to such transportation, or any substance or chemical subject to the requirements of this title, including the transportation and distribution of natural gas.



SEC. 328 REGULATIONS.

The Administrator may prescribe such regulations as may be necessary to carry out this title.



SEC. 329 DEFINITIONS,

For the purposes of this title:

(1) **ADMINISTRATOR.** The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) **ENVIRONMENT.** The term “environment” includes water, air, and land and the interrelationship, which exists among and between water, air, and land and all living things.

(3) **EXTREMELY HAZARDOUS SUBSTANCE.** The term “extremely hazardous substance” means a substance on the list described in section 302 (a) (2).

(4) **FACILITY.** The term “facility” means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 304, the term includes motor vehicles, rolling stock, and aircraft.

(5) **HAZARDOUS CHEMICAL.** The term “hazardous chemical” has the meaning given such term by section 311 (e).

(6) **MATERIAL SAFETY DATA SHEET.** The term “material safety data sheet” means the sheet required to be developed under section 1910.1200(G) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) **PERSON.** The term “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.

(8) **RELEASE.** The term “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 toxic chemical.

(9) **STATE.** The term “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 Marianna Islands, and any other territory or possession over which the United States has jurisdiction.

(10) TOXIC CHEMICAL. The term "toxic chemical" means a Substance on the list described in section 313 (c).



SEC. 330 AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this title.



GUIDE FOR CONDUCTING EFFECTIVE MEETINGS

A GUIDE FOR THE LEPC

Meetings are not usually very high on anyone's like-to-do list. Unfortunately, however, they seem to be an ever increasing part of our lives. This section of the LEPC handbook will offer some suggestions on how to conduct more productive meetings. We hope these ideas prove helpful. Use what works for you, ignore what doesn't, and add whatever improvement you care to.

How to PITCH a Better Meeting

PITCH is an acronym for this five step process for conduction better meetings.

- Plan
- Inform
- Target
- Contain
- Hasten

PLAN the meeting, being clear about:

1. The purpose of the meeting.
2. Agenda Items.
3. The desired outcome.
4. What arrangements need to be made.
5. How long the meeting will last.

INFORM meeting participants of:

1. The purpose of the meeting
2. Agenda Items.
3. The desired outcome.



4. Date, time and location.
5. Any previous assignments.

TARGET productive discussion by:

1. Stating and clarifying the purpose of the meeting.
2. Getting agreement on desired outcomes.
3. Allowing for modification of the agenda (including adding or deleting items, changing the order, or adjusting the times allocated).

CONTAIN the discussion to the agreed-upon agenda by:

1. Having someone in charge and someone to act as recorder.
2. Adhering to the agenda unless the group explicitly agrees to alter it.
3. Confronting behavior that diverts the group from attaining its desired outcomes.
4. Encouraging each LEPC member attending to participate fully.
5. Getting agreement on action steps, responsibilities and target dates.

HASTEN the completion of agreed-upon desired outcomes by:

1. Summarizing the meeting.
2. Recording the decisions that were made.
3. Recording the names of persons responsible for implementing action steps and the target dates.
4. Agreeing on a date for the next meeting
5. Evaluating every meeting and agreeing on ways to improve.
6. Editing and distributing minutes.
7. Putting unfinished business on the agenda for the next meeting.
8. Following up and encouraging task completion



9. Monitoring and evaluating the results achieved by the group.

ROLE OF THE CHAIRMAN OR MEETING FACILITATOR

1. Summarize the last meeting.
2. Appoint a recorder.
3. Remind members of any commitments or agreements they make for this meeting.
4. Review and clarify the agenda if necessary.
5. Prioritize tasks if the agenda hasn't already done so.
6. Establish specific outcomes desired for this meeting.
7. Establish time frames for each task.
8. Keep members focused and on task.
9. Keep the meeting moving.

KEEPING A MEETING GOING

The chairman or meeting leader should:

1. Keep the members on task.
2. Check for agreement or disagreement.
3. Track progress on the agenda.
4. Provide ongoing feedback to the group – summarize, paraphrase, restate frequently.
5. Protect against domination by a few individuals.
6. Call on silent members to participate.
7. Protect individuals from personal attack.



8. Suggest alternatives or options.
9. Surface conflicts.
10. Call for breaks.
11. Assist the recorder.

THE ROLL OF THE RECORDER

The recorder is not the LEPC secretary. In fact, the secretary cannot perform both the duties of the secretary and recorder at the same time. The recorder keeps track of what is actually occurring during any given project or discussion period of the meeting. This information is recorded on flip charts and posted on the walls so the members can keep track of where they are and what still needs to be done.

Preparation:

1. Make sure of an adequate supply of flip chart pads, markers and masking tape.
2. Use two flip chart easels so you can move from a completed page to a fresh one without interruption.
3. Tear off small pieces of masking tape and attach them to the edge of the flip chart easel before the meeting to speed the posting of completed flip chart pages.

Execution:

1. Tell the members that, as recorder, you will record the substance of member contributions as you hear them and that you expect them to review what you've recorded for accuracy.
2. Ask for a volunteer to help you post completed pages.
3. Record the speaker's words, not your own.
4. Do not record names.
5. Write legibly but quickly so as not to dampen the group's energy. Don't print unless you print faster than you write.



6. If ideas come too fast, ask for help.
7. You may express ideas the same as any other member, but remain unobtrusive as the recorder.
8. Use different colored markers, arrows, numbers, stars, etc. to organize data and for different headings, emphasis, etc.
9. Use only commonly understood abbreviations.
10. When you summarize a long idea in key phrases, ask the speaker if you have accurately recorded the idea.

Completion:

1. Number each page to help keep completed sheets in order.
2. At the end of the meeting, compile and label the completed flip chart pages, and make sure they are safely stored and made available for the next meeting, if the project carries over into the next meeting.
3. Make sure the members agree on what will be done with the record once the project is complete. You may want to save it or you may want to discard it or make some other use of it.



GUIDE TO UNDERSTANDING TIER II FORMS

INTRODUCTION

Title III of the [Superfund Amendment and Reauthorization Act of 1986 \(SARA\)](#) is the [Emergency Planning and Community Right-To-Know Act \(EPCRA\)](#). The Act establishes requirements for industry regarding emergency planning and “community right-to-know” reporting on hazardous chemicals. Section 312(a) states: “The owner or operator of any facility which is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the [Occupational Safety and Health Act of 1970](#) and regulations promulgated under the Act (15 U.S.C. 651 et seq.) shall prepare and submit an emergency and hazardous chemical inventory form.

This form, known as a Tier II report, **MUST** be provided to each of the following: the appropriate Local Emergency Planning Committee (LEPC), State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility”. When properly prepared, the inventory form contains vital information Local Emergency Planning Committees and State Emergency Response Commissions utilize for emergency planning purposes and that first responders such as law enforcement officials, emergency medical technicians, and of course, fire departments utilize for response purposes.

On the Tier II form, the facility is required to provide the chemical identity, hazards associated with the chemical, maximum and average amounts stored on-site, and general storage locations.

On the attached pages we have broken the Tier II form down by section and provided information which should assist you in completing the Tier II report.

Detailed instructions for completing Tier II forms also accompany those forms. Tier II forms should always be typed or neatly printed to ensure accurate legibility.

HAZARDOUS CHEMICAL PREPAREDNESS AND RESPONSE PROGRAM FEE(S):

The North Dakota Hazardous Chemical fee is \$25.00 per substance per facility as reported on the Tier II form. There is a maximum fee of **\$475.00** per facility. The fee, payable to the **North Dakota Department of Emergency Services, MUST BE SUBMITTED** with your Tier II report.

FACILITY IDENTIFICATION BLOCK:

1. Name: Provide the name of the facility being reported. If the facility is an oil lease, or a field or tank battery, give the legal name of the lease, field or tank battery.
2. Street, City, County, State, Zip Code: Provide the legal address of the facility. If the facility is an oil lease, give the legal description (Section, Township, Range). Refer to the separate oil field guidance sheet for reporting fields. If no street address is available, enter other appropriate information (latitude, longitude). **DO NOT** use post office box numbers. **DO NOT** use home office addresses in the facility ID block unless they are co-located with the facility.
3. North American Industrial Classification (NAICS) Code: The NAICS code can be found at the following website: <http://www.naics.com/cgi-bin/n02keys2.pl> If you cannot determine your NAICS code number, contact our Hazardous Chemicals Preparedness & Response Program staff (701) 328-8112 and they will assist you in obtaining this number.
4. Dun & Bradstreet (D&B): If you do not know your firm's D&B number, call 1-800-999-3867 between 7:00AM-4:30PM Central Standard Time. They will issue your number over the phone. This includes cities, counties and schools, as well as businesses. There is no charge for this service.

Facility Identification									
Name									
Street									
City	County			State			Zip		
SIC CODE					Dun & Brad Number				

This space left blank intentionally.

OWNER/OPERATOR BLOCK:

1. Name: Name of the owner or operator. This can be the corporate offices.
2. Phone: Telephone number of the facility.
3. Mailing Address: Use the address to which you want EPCRA correspondence sent. **DO NOT** use the facility address, **unless** you want all EPCRA correspondence to go to this facility, and not to the main office. A post office box number is acceptable here.

EMERGENCY CONTACT BLOCK:

1. Name: Provide the name and title of two emergency contacts for the facility. **At least one name MUST be a local individual with a local telephone number.** This person should have the authority and expertise to provide guidance if emergency responders need assistance in responding to a chemical incident at the facility.
2. Phone: Use the day or office telephone number of the emergency contact.
3. 24-Hour Phone Number: Provide a 24-hour number where emergency assistance will be available. **THIS REQUIREMENT IS MANDATORY.**

Owner/Operator Name	
Name _____	Phone _____
Mail Address _____	
Emergency Contact	
Name _____	Title _____
Phone _____	24-Hour Phone _____
Name _____	Title _____
Phone _____	24-Hour Phone _____

REPORTING PERIOD AND DUPLICATE INFORMATION:

1. List the year for which the facility is reporting. The reporting period is a calendar year – from January to December. As an example, for the report due on March 1, 2010, the reporting year is 2009, not 2010.

REPORTING PERIOD From January 1 to December 31, <u>2012</u>
--

2. If you are reporting the same information that you reported last year, you should mark this box. You **must still complete** the entire form. This information will assist the LEPC, fire department, or SERC for data entry purposes. We want to eliminate dual facility entries, which make one facility show up as a non-reporter and require costly follow-up.

<input type="checkbox"/>	Check if information below is identical to the information submitted last year.
--------------------------	--

This space left blank intentionally.

CHEMICAL DESCRIPTION BLOCK:

1. Chemical Abstract Service Registry (CAS) Number: Chemical Abstract Service Registry Number. This number can be found in section 1 of the Material Safety Data Sheet (MSDS), or in the Title III, [List-Of-Lists](#). If no CAS number is found for the chemical, leave this space blank.
2. Trade Secret: You may claim a trade secret exemption for any chemical you think will damage you competitively if the name is revealed. The criteria for this exemption are extremely narrow and the penalty for claiming a trade secret exemption erroneously is large. If you think you may qualify for a trade secret, contact our EPCRA staff for further assistance.
3. Chemical Name: List the chemical name of the substance(s). You can find the name on the container label, the List-of-Lists, or the MSDS. If the substance is a mixture, you may report either the mixture or separate components.
4. Chemical Form/Extremely Hazardous Substance (EHS): Mark the form of the chemical; solid, liquid, or gas, pure, or mixture. If the chemical is an extremely hazardous substance (EHS), or an EHS is present in a mixture, then the EHS name should be listed, and the EHS block checked on the form.

Chemical Description						
CAS	<input type="text"/>					
	<input type="text"/>	<input type="text"/>			<input type="text"/>	Trade Secret <input type="text"/>
Chemical Name _____						
Check all That apply	<input type="checkbox"/>					
	Pure	Mix	Solid	Liquid	Gas	EHS
EHS Name _____						

PHYSICAL AND HEALTH HAZARDS BLOCK:

1. The various hazards for the substance should be marked. The Material Safety Data Sheet (MSDS) should provide information on which hazards apply to the substance.

Physical And Health Hazards						
<table border="1"><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr><tr><td> </td></tr></table>						Fire Sudden Loss of Pressure Reactivity Immediate (Acute) Delayed (Chronic)

This space left blank intentionally.

Inventory Block:

1. **Maximum Daily Amount:** Use the code number from the table below that represents the maximum quantity stored on-site at any one time. All amounts should be calculated in pounds.
2. **Average Daily Amount:** Use the code number that represents an estimate of the average quantity stored on-site each day.
3. **Days On-Site:** Write in the number of days that the chemical was located on site during the reporting year.

INVENTORY CODES – RANGE IN POUNDS

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	1,000,000,000	> 1,000,000,000

INVENTORY	
<input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/> <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/>	Max Daily Amount (code)
<input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/> <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/>	Avg. Daily Amount (code)
<input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/> <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/> <input style="width: 30px; height: 20px; border: 1px solid black;" type="text"/>	No. of Days On-site (days)

CERTIFICATION LINE:

1. Fill in the name and title of the certifying official along with the date signed. The owner, operator, or officially designated representative **MUST** certify by signature that all information included in the Tier II submission is true, accurate, and complete. Also, enter the total number of pages included in the report as well as all attachments. Submissions to the SERC, LEPC and fire department **MUST HAVE an original signature** on at least the first page of the report. Copies of the signature can be on any additional pages. You can certify multiple submissions with a single cover letter that meets the above requirements. If you elect this option, each Tier II submission covered by the letter must have a facsimile or stamped signature on it as well.

Certification		
Name and Official Title	Signature	Date Signed

OPTIONAL ATTACHMENTS BLOCK:

1. A site plan, site coordinates, and precautionary measures may be attached to the form to assist the emergency responders. This is mandatory if the facility has reportable quantities of EHS present. After the first filing, the site plan does not have to be submitted annually unless there are changes to it.

Optional Attachments	<input type="checkbox"/>	I have attached a site plan
	<input type="checkbox"/>	I have attached a list of site coordinates Abbreviations.
	<input type="checkbox"/>	I have attached a description of dikes and Other safeguard measures.



SAMPLE FORMAT FOR HAZMAT TRANSPORTATION FLOW STUDY

The following eight-step guide on how to conduct a hazardous materials transportation study may prove helpful for Local Emergency Planning Committees (LEPCs) wanting to conduct such a study for their county or a specific area within the county. This guide was developed by [Transportation Community Awareness and Emergency Response](#) (TRANSCAER) which is an outreach program that was developed to assist communities that do not host a major chemical facility but have major transportation routes within their jurisdictions. TRANSCAER is sponsored by the chemical manufacturing, distribution and transportation industries. This guide can be used for HMEP grant funded studies as well as those that are funded from other sources.

1. Write a statement of purpose.

The statement of purpose should include the goals of the flow study, what data will be collected, from whom, who will analyze the data, and the methods that will be used to complete the remaining seven steps in the process.

2. Review local maps and analyze transportation patterns.

Use local road and rail maps, coupled with existing knowledge of the transportation modes used within the area, to determine the routes used to ship hazardous materials through, into, out of, and within the area. Highway, rail, pipeline, and air freight routes, as well as routes to and from facilities should be considered.

3. Identify the hazardous materials moved through or within the community.

Using information from Tier II reports and chemical users and shippers, identify the type and amount of hazardous materials transported thorough, into, out of or within the community.

4. Conduct highway flow surveys.

Traffic flow, especially on key routes, should be determined.

5. Review major accident and incident history for the community.

Review any incident data that is available from local and state police files, state transportation agencies and federal agencies.



6. List vulnerable facilities.

Identify and rank vulnerable facilities, such as hospitals, schools, and nursing homes to help emergency planners and responders if an incident occurs, especially if evacuation is necessary. The type and level of emergency planning that should be done for each transportation mode should be based on this evaluation.

7. Identify potential accident areas and develop accident scenarios.

Using the information gained in the previous steps, identify possible accident locations and scenarios.

8. Use the data to assist in emergency planning.

Beginning with a basic map of the area, develop overlay maps on transparency sheets. A separate sheet should be used for fixed facilities and each transportation mode. Separate colors should be used for each route. The set of maps will give the big picture of how hazardous materials are transported within the community, and should help with emergency planning.



CHANGES AND REVISIONS TO EPCRA

Reporting Thresholds

In 1998, the [Environmental Protection Agency \(EPA\)](#) changed the reporting threshold for retail outlets of liquid refined petroleum products (all grades of gasoline, gasoline/alcohol blends, diesel fuel kerosene, heating oil, jet fuel, and similar products), that have storage tanks entirely under ground. The changes are in effect for the Tier II reports due March 1, 1999 and thereafter.

Gasoline and gasoline/alcohol blends changed to 75,000 **gallons**. The previous threshold was 10,000 **pounds** (about 1,600 gallons).

Diesel fuel, kerosene, heating oil and jet fuel changed to 100,000 **gallons**. The previous threshold was 10,000 **pounds** (about 1,400 gallons).

These changes apply only to retail outlets and only to those whose storage tanks are completely **under ground**. All wholesale outlets (bulk plants) and those retail outlets with storage tanks fully or partially above ground must still comply with the old threshold of 10,000 pounds.

112r and the LEPC

Effective in 1999, certain facilities are required to file a Risk Management Plan (RMP) with EPA under Section 112r of the [Clean Air Act](#). The law requires the Local Emergency Planning Committees (LEPCs) for the jurisdiction where the facility is located be provided with a copy of the RMP as well. The facilities most likely to fall under this requirement are petroleum bulk plants, (especially propane) anhydrous ammonia plants, petroleum refineries, chemical warehouses and facilities that use chlorine gas, such as water treatment plants and swimming pools.

The N.D. Agriculture Department oversees Section 112r requirements (for anhydrous ammonia only) in North Dakota. The role of the LEPC in this program ensures the Local Emergency Response Plan included the RMP or parts of it as appropriate.

Summary of Changes to LEPC Handbook

The following information is a summary of the changes to the LEPC Handbook:

LEPC HANDBOOK,

Entire document, changed date from “4/2013” to “9/2014” on top of page

Page 3, paragraph 4, line 2, added acronym (CTRK)

Page 4, paragraph 1, line 5, changed page 6 to “page “9”.

Page 5, paragraph 1, line 3, inserted the word “and” between hazardous chemicals *and* emergency response plans.

Page 6, under Section 302, paragraph 1, line 3 added “fire department with jurisdiction over the facility” after “LEPC”.

Page 6, paragraph 4, under **Section 303**, line 7, and changed page number from “12” to “14”.

Page 9, paragraph 2, **Establishment of Funds:**, line 3, changed “\$150” per facility to “\$475” per facility.

Page 12, under **V. LEPC DUTIES AND RESPONSIBILITIES ARE:** paragraph A.2.d., deleted “(if possible, someone with a computer)”

Page 13, under B. Develop an emergency notification system: paragraph B.2. replaced “teletype” with “WebEOC”.

Page 14, paragraph 1, line 3, deleted “You don/t need to reinvent the wheel with this.”

Page 14, number 3, replaced the “.”, after the word “supplied” with “?”.

Page 14 number 3f replaced the “.”, after the word “impacted” with “?”.

Page 15, bottom of page, added text box highlighted in “blue” with information dealing with agenda items for meetings.

Page 17, under **VI. LEPC ACTIVITIES**, Section “B”2. Grants, paragraph 5, reworded the paragraph from “Provide state agency personnel to conduct training, such as the fire marshall’s office to train first responders” to “Procure state agency personnel to conduct training such as the Fire Marshal’s Office or ND Firefighters Association (NDFA) to train first responders”.

Page 19, under D. Outreach, line 3, added “and what?”, after the word “how”.

Attachment A

Page 1, added "**State Legislation NDCC 37-17.1-07.1**"

Page 3, paragraph 3, line 2, added "*as appointed by the Boards of Commissioners*"

Page 3, paragraph 4, line 2, inserted sentence "*The state emergency response commission by vote will select the vice chairman to fulfill a two-year term*".

Page 2, paragraph 4, last line, inserted the following: "*to include training, exercising, equipment, response, and salaries*".

Attachment B

Page 17, last paragraph on page, line 4, replaced the number "3244" with "324".

Attachment C

Page 1, changed "**GUIDE FOR CONDUCTION EFFECTIVE MEETIGS**" to "**GUIDE FOR CONDUCTING EFFECTIVE MEETINGS**" at top of page.

Attachment E

Page 1, changed title at top of page from, "**TRANSCEAR'S GUIDE FOR CONDUCTING A HAZMAT FLOW STUDY**" to "**SAMPLE FORMAT FOR HAZMAT TRANSPORATION FLOW STUDY**".

Attachment F

Under 112r and LEPC

Page 1, paragraph 2, line 1, replaced "N.D. Insurance Department" with "N.D. Agriculture Department", and after Section 112r requirements added, "(for anhydrous ammonia only)".