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## **Hazardous Chemical Reporting: Community Right-to-Know; Revisions to Hazard Categories and Minor Corrections**

### **Final Rule: Technical Amendment**

This final rule revises the hazard categories in the regulations at 40 CFR part 370 for reporting under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). On March 26<sup>th</sup>, 2012, the Occupational Safety and Health Administration (OSHA) revised its Hazard Communication Standard (HCS) by adopting the United Nations Globally Harmonization System of Classification and Labeling of Chemicals (GHS). The changes to OSHA's HCS affect the reporting requirements under Sections 311 and 312 of EPCRA.

### **What are the reporting requirements of EPCRA Sections 311 and 312?**

Sections 311 and 312 of EPCRA (also known as the community right-to-know reporting) contain provisions for hazardous chemical inventory reporting. Facilities that handle hazardous chemicals defined under the Occupational Safety and Health Act of 1970 and its implementing regulations must provide information on the quantity, locations, and the potential hazards of these chemicals. This information is submitted to the State Emergency Response Commission (SERC), (or Tribal Emergency Response Commission (TERC)), Local Emergency Planning Committee (LEPC), (or Tribal Emergency Planning Committee (TEPC)), and the fire department.

Section 311 requires facilities to submit the Safety Data Sheets (SDSs) (formerly known as Material Safety Data Sheet, "MSDS") of hazardous chemicals present at or above the reporting thresholds specified in the regulations at 40 CFR part 370. Facilities may also submit a list of hazardous chemicals grouped into hazard categories, instead of the SDSs (or MSDSs).

Section 312 requires these facilities to submit the hazardous chemical inventory form to their SERC (or TERC), LEPC (or TEPC) and the fire department by March 1<sup>st</sup>, annually. The inventory form provides the physical and/or health hazard of each hazardous chemical, their locations, and quantities that were present at the facility during the previous calendar year.

### **What is the Background of this Final Rule?**

The statute specifies that the list of hazardous chemicals reported under section 311 and the inventory forms reported under section 312 should be based on the physical and health hazards established under the Occupational Safety and Health Act and its implementing regulations. The statute also states that, EPA may modify the physical and health hazards set forth by OSHA and its implementing regulations. Accordingly, EPA modified OSHA's 23 physical and health hazards into five hazard categories (three physical and two health hazard categories) for facilities to use for reporting under sections 311 and 312. Facilities have been using these five hazard categories since the regulations were promulgated in 1987.

On March 26<sup>th</sup>, 2012, OSHA published a final rule to revise the HCS due to its adoption of the GHS classification and labeling of chemicals. GHS is a standardized approach for classifying chemicals by their health, physical and environmental effects, and communicates this information to downstream users by using consistent signal words, pictograms, hazard statements, etc., on labels and SDSs.

OSHA adopted the classification criteria and provisions that are appropriate to its existing standards for hazard communication for labeling and SDSs. Under the revised HCS, chemical manufacturers and importers are required to evaluate their chemicals to ensure that they are classified and labeled appropriately.

### What are the Revisions to Hazard Categories for Reporting under Sections 311 and 312?

The classification of chemicals that OSHA adopted from GHS affect the reporting requirements under EPCRA Sections 311 and 312. As stated in the statute, facilities are required to report the quantities, locations, and the potential hazards of the chemicals to the SERC (or TERC), LEPC (or TEPC) and the local fire department. Therefore, EPA is revising the existing hazard categories in 40 CFR part 370 to conform to the hazard classes in the revised OSHA HCS.

Although the physical and health hazards in OSHA HCS prior to the 2012 revisions are the same as the revised hazards, the descriptions of each hazard are more detailed. See tables below for descriptions of physical and health hazard classes before and after adopting GHS provisions.

#### Physical and Health Hazard Classes in OSHA Hazard Communication Standards (HCS)

Physical Hazards (prior to GHS adoption)	Physical Hazards (after adoption, revised in 2012)
Combustible liquid	Flammable (gases, aerosols, liquids, or solids)
Compressed Gas	Gas under pressure
Explosive	Explosive
Flammable	Self-heating
Pyrophoric	Pyrophoric (liquid or solid)
Oxidizer	Oxidizer (liquid, solid, or gas)
Organic Peroxide	Organic peroxide
Unstable (Reactive)	Self-reactive
Water-Reactive	In contact with water emits flammable gas
	Corrosive to metal
	Hazard Not Otherwise Classified (HNOC)

Health Hazards (prior to GHS adoption)	Health Hazards (after adoption, revised in 2012)
Carcinogens	Carcinogenicity
Toxic or highly toxic agents	Acute toxicity (any route of exposure)
Reproductive toxins	Reproductive toxicity
Irritants; Corrosives	Skin Corrosion or Irritation
Sensitizers	Respiratory or Skin Sensitization
Agents which damage the lungs, skin, eyes, or mucous membranes	Serious eye damage or eye irritation
Hepatotoxins	Specific target organ toxicity (single or repeated exposure)
Nephrotoxins	Germ cell mutagenicity
Neurotoxins	Aspiration Hazard
Agents which act on the hematopoietic system	Hazard Not Otherwise Classified (HNOC)

In addition to the hazards adopted from GHS, OSHA specifically added three hazards that were not yet covered by GHS. These are simple asphyxiant, combustible dust, and pyrophoric gas.

Soon after OSHA's HCS 2012 final rule was published, many stakeholders requested EPA adopt physical and health hazard classes as described in the revised HCS. The stakeholders expressed that, if the EPA adopted these physical and hazard classes, it would be less burdensome to:

- The regulated community, as they would only need to copy the chemical hazard information from the MSDS (SDS), and
- The implementing agencies, as they could more easily compare the hazard information provided on each SDS with the information provided on the list of hazardous chemicals and the inventory form.

In this final rule, EPA is adopting the hazard classes as they are in the revised HCS for reporting under Sections 311 and 312.

### Physical and Health Hazards (to be effective January 1<sup>st</sup>, 2018)

Physical Hazard	Health Hazard
Flammable (gases, aerosols, liquids, or solids)	Carcinogenicity
Gas under pressure	Acute toxicity (any route of exposure)
Explosive	Reproductive toxicity
Self-heating	Skin Corrosion or Irritation
Pyrophoric (liquid or solid)	Respiratory or Skin Sensitization
Pyrophoric Gas	Serious eye damage or eye irritation
Oxidizer (liquid, solid or gas)	Specific target organ toxicity (single or repeated exposure)
Organic peroxide	Aspiration Hazard
Self-reactive	Germ cell mutagenicity
In contact with water emits flammable gas	Simple Asphyxiant
Combustible Dust	Hazard Not Otherwise Classified (HNOC)
Hazard Not Otherwise Classified (HNOC)	
Corrosive to metal	

#### What is the Effective Date of this Final Rule?

Many states have developed their own software for hazardous chemical inventory reporting. Other states use Tier2 Submit, electronic software developed by EPA. To provide enough time for states (as well as EPA) to modify the software to incorporate the new hazard classes, this final rule will be effective on January 1<sup>st</sup>, 2018. This means that, by March 1<sup>st</sup>, 2018, facilities are required to report the revised physical and health hazards for their hazardous chemicals present during 2017 calendar year.

Some states may already require facilities to report their hazardous chemicals using the revised physical and health hazards. Check with your state for specific reporting requirements.

**For more information:** [https://www.epa.gov/epcra/epcra-non-section-313-amendments-and-guidance#technical amendment](https://www.epa.gov/epcra/epcra-non-section-313-amendments-and-guidance#technical%20amendment)