



EPCRA 313 Reporting - FAQs

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05.19.2016

The Emergency Planning and Community Right-to-know Act (EPCRA) requires Form R reports to be filed with EPA each July 1 for each listed toxic chemical a facility manufactures or processes in excess of 25,000 lbs., or otherwise uses in excess of 10,000 lbs., during the previous calendar year. The reporting form and implementing regulations are found at 40 CFR Part 372. For the list of toxic chemicals, consult the EPA Consolidated List of Lists at <https://www.epa.gov/epcra/consolidated-list-lists>. EPA has published three frequently asked questions that should be of interest to our readers, along with EPA's responses, as follows:

QUESTION NO. 1: Suppose a facility consists of several establishments, some of which have primary NAICS codes within the covered codes and some of which have primary NAICS codes outside that range. How would this facility determine if it is covered by EPCRA Section 313?

ANSWER: A facility must file a Form R where:

- The facility is included in a TRI-covered North American Industry Classification System (NAICS) code (see the TRI NAICS code webpage or Table I of the current Reporting Forms and Instructions for a complete list); and
- The facility has 10 or more full-time employee equivalents (i.e., a total of 20,000 hours or greater; see 40 CFR 372.3); and
- The facility manufactures (defined to include importing), processes or otherwise uses any EPCRA Section 313 chemical in quantities greater than the established threshold in the course of a calendar year.

A facility must report if those establishments that are in the covered NAIC codes have a combined value added of more than 50 percent of the total value added of services provided or products shipped or produced by the whole facility, or if one of those covered SIC code establishments has a value added of services or products shipped or produced that is greater than the value added of any other establishment in the facility (40 CFR Section 372.22(b)(3)). If the facility determines that the

establishments meet this test, the entire facility has met the SIC code criterion. If the entire facility also meets the employee and chemical activity thresholds (based on all establishments at the facility), then the entire facility would be subject to EPCRA Section 313 reporting.

QUESTION NO. 2: If a toxic chemical is derived from the phase separation of wastes received from off-site and that chemical is subsequently incorporated into a product at the facility and then distributed into commerce, has the toxic chemical been processed or otherwise used?

ANSWER: If a facility receives materials containing toxic chemicals from off-site for further waste management and the toxic chemicals are treated for destruction, stabilized, or *disposed* on-site, the facility would be otherwise using the toxic chemicals. However, during phase separation the toxic chemical in the waste is not actually destroyed. Furthermore, the toxic chemical is incorporated into a product at the facility and is further distributed in commerce (e.g., retorted mercury sold for reuse in thermometers and mercury switches). Thus, as long as the toxic chemical coming from the waste is not stabilized, treated for destruction, or disposed, it would not be otherwise used because it is neither treated for destruction nor disposed on site.

Because it is distributed in commerce, it would be processed. Once a facility exceeds a threshold for a particular toxic chemical, amounts of that chemical that are released or otherwise managed as a waste must be calculated for all on-site activities.

QUESTION NO. 3: A covered facility manufactures and repairs small engines and automobile engine parts. Prior to beginning the work, any fuel in the fuel tanks of the small engines is removed, and fuel used to test fire the engine parts is also collected. After the work is completed, the removed fuel is re-used along with any necessary new fuel to fill the need. Must the toxic chemicals in the fuel be included when determining if 313 EPCRA thresholds and release threshold are exceeded?

ANSWER: Yes. Listed toxic chemicals in the fuel must be reported in this example because the fuel constituents listed as 313 toxic chemicals are *processed*. The constituents in the fuel go out the door into distribution with the product. *Process* means the preparation of a toxic chemical, after its manufacture, for distribution in commerce: (1) 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 substance, or (2) as part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product. See 40 CFR 372.3.

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