



Member Alert

EPCRA Hazardous Chemical Storage Reporting: Compliance Reminder

WASHINGTON (May 14, 2013) - The [U.S. Environmental Protection Agency \(EPA\) Office of Emergency Management](#) is classifying any agricultural retailers that blend fertilizer as a manufacturer for reporting purposes under Section 312 of the [Emergency Planning and Community Right-to-Know Act \(EPCRA\)](#) of 1986. Any agricultural retailer that blends (i.e. non-chemical reaction) dry fertilizer at their facility should include these products on an annual inventory report (Tier 2 report) that must be submitted to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department. The information must also be available to the public. Facilities must submit their Tier 2 reports by March 1 of each year. ARA recommends each facility review their Tier 2 reports to ensure information on all blended fertilizer stored on-site has been included.

Background Information

EPCRA establishes requirements for federal, state and local governments, Indian tribes, and industry regarding emergency planning and "Community Right-to-Know" reporting on [Hazardous Chemical Storage Reporting \(Sections 311-312\)](#). For any hazardous chemical used or stored in the workplace, facilities must maintain a material safety data sheet (MSDS) for fertilizer stored on site, and submit the MSDSs (or list of the chemicals) to their SERC, LEPC, and local fire department. Under EPCRA Section 311, facilities must submit the same MSDSs they maintain for OSHA to these state and local agencies or submit a detailed list of the same chemicals instead. This is a one-time submittal; facilities have three months after becoming subject to the OSHA regulations to submit their material.

Under Section 312, facilities also need to submit an annual inventory report (Tier I or [Tier II report](#)) for the same chemicals. As stated earlier, this inventory report must be submitted on an annual basis to the SERC, LEPC and local fire department by March 1.

EPCRA provides for a "retail fertilizer" reporting exemption (42 USC § 11021(e)(5)). The law says,

"For purposes 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...

(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."

Many agricultural retailers have historically chosen to claim this retail fertilizer exemption. However, EPA has cited agricultural retailers for incomplete [Tier II forms](#) when the facility claimed the retail exemption for blended fertilizer, even in the case of non-hazardous fertilizers like potash. With EPA classifying agricultural retailers that blend fertilizer as fertilizer manufacturers under EPCRA, the retail exemption would not apply. ARA disagrees with EPA's interpretation as the plain statutory language appears very clear. However, given the agency's firm position and increased enforcement actions, ARA strongly recommends facilities include this information on the Tier II form. ARA will continue to work with EPA on a resolution, and work with Congress for a legislative correction to EPA's interpretation.

Most states require [Tier II forms](#) with the following basic facility identification information, employee contact information for both emergencies and non-emergencies, and information about chemicals stored or used at the facility:

- The chemical name or the common name as indicated on the MSDS;
- An estimate of the maximum amount of the chemical present at any time during the preceding calendar year and the average daily amount;
- A brief description of the manner of storage of the chemical;
- The location of the chemical at the facility; and

- An indication of whether the owner of the facility elects to withhold location information from disclosure to the public.

More information on your state's reporting requirements are available [here](#).

EPA's guidance on EPCRA reporting is available [here](#).

Please contact Richard Gupton of ARA at 202-595-1699 or richard@aradc.org if you have any questions or need more information.

The Agricultural Retailers Association (ARA) is a nonprofit trade association representing the interests of retailers across the United States on legislative and regulatory issues on Capitol Hill. As the political voice of agricultural retailers, ARA not only represents its membership but also educates members on the political process and important issues affecting the industry. For more information, visit: www.ARADC.org.

Agricultural Retailers Association - 1156 15th Street, NW - Suite 500 - Washington, DC 20005

Phone: (202) 457-0825 Fax: (202) 457-0864

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1156 15th Street, NW, Washington, DC, 20005, US

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