

SECTION ONE – ENVIRONMENTAL REGULATIONS

CHAPTER 5: SARA Title III – Emergency Planning and Community Right-to-Know Act



Purpose and Applicability of Regulations

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted by Congress in 1980 to clean up the nation's hazardous waste sites and to provide for emergency response to releases of hazardous substances into the environment.

CERCLA is also called Superfund, and the hazardous waste sites are known as Superfund sites. In response to community concern regarding hazardous materials and chemical release tragedies, a reauthorization and expansion of Superfund was signed into law in 1986. It is known as the Superfund Amendments and Reauthorization Act (SARA). Title III of SARA ("SARA Title III") is the Emergency Planning and Community Right-To-Know Act (EPCRA).

SARA Title III establishes requirements for federal, state, and local governments, Indian tribes, and industry regarding emergency planning and "Community Right-to-Know" reporting on hazardous and toxic chemicals. The Community Right-to-Know provisions help increase the public's knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment. States and communities, working with facilities, can use the information to improve chemical safety and protect public health and the environment.

Agencies and Their Laws and Rules

Federal Agencies: The U.S. Environmental Protection Agency (U.S. EPA) enforces SARA Title III in Michigan. The regulations implementing SARA Title III are codified in Title 40 of the Code of Federal Regulations, Parts 350 through 372.

State Agencies: SARA Title III is a federal act that is implemented in Michigan under an executive order from the Governor. Executive Order 2007-18 created the Michigan Citizen-Community Emergency Response Coordinating Council as an advisory body within the Michigan Department of State Police (MSP). This council is responsible for developing and implementing citizen volunteer emergency response plans and hazard mitigation plans, and it acts as the *State Emergency Response Commission* (SERC) as required by SARA Title III. The MSP Emergency Management and Homeland Security Division (EMHSD) oversees the emergency planning requirements in SARA Title III. The **Michigan SARA Title III Program** in the Department of Environmental Quality (DEQ) handles the reporting requirements in SARA Title III and **receives all reports on behalf of the SERC.**

In this Chapter:

- Purpose and Applicability of Regulations
- Agencies and Their Laws and Rules
- 5.1 – What Does SARA Title III Cover?
- 5.2 – Emergency Planning (Sections 302 & 303)
- 5.3 – Emergency Release Notification (Section 304)
- 5.4 – Hazardous Chemical Inventory (Sections 311 & 312)
- 5.5 – Online Reporting (Sections 302, 311, 312)
- 5.6 – Toxic Chemical Inventory (Section 313)
- 5.7 – Other SARA Title III Requirements
- Where To Go For Help

SECTION ONE: Environmental Regulations

Local Agencies: SARA Title III requires that the SERC establish Local Emergency Planning Committees (LEPCs). There are 87 LEPCs in Michigan – one for each of the 83 counties, as well as LEPCs for the cities of Ann Arbor, Detroit, Romulus, and Wayne. Data collected pursuant to SARA Title III are used by LEPCs and local fire departments.

5.1 What Does SARA Title III Cover?

SARA Title III has four major components:

- Emergency planning (Sections 302 & 303)
- Emergency release notification (Section 304)
- Hazardous chemical inventory (Sections 311 & 312)
- Toxic chemical release inventory (Section 313)

Information gleaned from these four requirements helps states and communities develop a broad perspective of chemical hazards for the entire community as well as for individual facilities. Regulations implementing SARA Title III are codified in Title 40 of the Code of Federal Regulations (CFR), Parts 350 to 372. The chemicals covered by each of the sections are different, as are the quantities that trigger reporting.

The reporting requirements for each of these sections are outlined in Table 5.1. The chemicals covered by each of the sections are different, as are the quantities that trigger reporting. Summaries of these reporting requirements are covered in the discussion below and in the flow charts at the end of this chapter. For a detailed discussion of the SARA Title III requirements, see the “Michigan Facilities’ Guide to SARA Title III, Emergency Planning, and Release Reporting” at www.michigan.gov/sara (select the “SARA Title III” link).

TABLE 5.1 SARA TITLE III REPORTING REQUIREMENTS

SARA TITLE III SECTION	REPORT REQUIREMENT	REPORT FORM	REPORT DUE	AGENCIES TO RECEIVE REPORT
302	Emergency Planning Notification	Emergency Planning Notification online in Tier II Manager™.	Within 60 days after threshold reached	Michigan SARA Title III Program LEPC
304	Emergency Chemical Release – Initial Notification		Within 15 minutes after discovery	Pollution Emergency Alerting System (PEAS) at 800-292-4706 or MDARD Hotline at 800-405-0101 All LEPCs potentially affected by the release U.S. Coast Guard National Response Center at 800-424-8802
304	Emergency Chemical Release – written follow-up	Spill or Release Report	Within 30 days after the release	Michigan SARA Title III Program All LEPCs affected by the release

SARA TITLE III SECTION	REPORT REQUIREMENT	REPORT FORM	REPORT DUE	AGENCIES TO RECEIVE REPORT
311	Initial Hazardous Chemical Inventory	Online in Tier II Manager™	Within 3 months after threshold reached	Michigan SARA Title III Program LEPC Local fire department
312	Tier II – Emergency & Hazardous Chemical Inventory	Tier II online in Tier II Manager™	Annually, by March 1	Michigan SARA Title III Program LEPC Local fire department
313	Toxic Chemical Release Inventory	Form R online in TRI-MEweb	Annually, by July 1	Michigan SARA Title III Program U.S. EPA TRI Data Processing Center

*There are **no fees** associated with reporting under SARA Title III in Michigan.*

5.2 Emergency Planning (Sections 302 & 303)

Off-site emergency response plans contain information that community officials can use at the time of a chemical accident. These plans are developed under Section 303 by the Local Emergency Planning Committee (LEPC) for the protection of the community. The plans address the off-site response to emergency releases of Extremely Hazardous Substances (EHSs) from certain facilities in the LEPC planning district. The plans must:

- Identify facilities subject to Section 302.
- Identify routes likely to be used for the transportation of EHS'.
- Identify facilities contributing to the risk due to their proximity to facilities subject to Section 302 such as natural gas facilities.
- Identify facilities subjected to additional risk due to their proximity to facilities subject to Section 302, such as hospitals.
- Describe emergency response procedures, on and off site.
- Designate a community coordinator and facility coordinator(s) to implement the plan.
- Outline emergency notification procedures.
- Describe how to determine the occurrence of a release, and the area or population likely to be affected by such release.
- Describe local emergency equipment and facilities, and identify the persons responsible for such.
- Outline evacuation plans.
- Include training programs, including schedules for training local emergency response and medical personnel.
- Provide methods and schedules for exercising the emergency plan.

5.3 Emergency Release Notification (Section 304)

Facilities must immediately notify the LEPC and SERC if there is a release into the environment of a hazardous substance that is equal to or exceeds the minimum reportable quantity set in the regulations. This requirement covers the 355 EHSs as well as over 770 listed hazardous substances subject to the emergency release notification requirements under CERCLA Section 103(a) (40 CFR 302.4). Some chemicals are common to both lists. Emergency release notification requirements involving transportation incidents can be met by dialing 911.

A written follow-up notice must be submitted to the SERC and the LEPC as soon as practicable after the release. The follow-up notice must update information included in the initial notice and provide information on the actual response actions taken and advice regarding medical attention necessary for citizens exposed to the released chemical.

Section 304 is only one of 27 state and federal regulations that have release reporting requirements that apply in Michigan. Additional release reporting requirements and a release reporting form that can be used to report releases under Section 304 is available on the Internet at www.michigan.gov/chemrelease.

The emergency release notification should include:



- The chemical name.
- An indication of whether the substance is extremely hazardous.
- An estimate of the quantity released into the environment.
- The time and duration of the release;
- Whether the release occurred into air, water, and/or land.
- Any known or anticipated acute or chronic health risks associated with the emergency and, where necessary, advice regarding medical attention for exposed individuals.
- Proper precautions, such as evacuation or sheltering in place.
- Name and phone number of contact person.

5.4 Hazardous Chemical Inventory (Sections 311 & 312)

Under the Occupational Safety and Health Administration (OSHA) regulations, employers must maintain a Safety Data Sheet (SDS) for any hazardous chemicals stored or used in the work place. Over 650,000 products have SDSs.

Note: *The Hazard Communication Standard requires chemical manufacturers, distributors, or importers to provide SDSs (formerly known as Material Safety Data Sheets or MSDSs) to communicate the hazards of hazardous chemical products. As of June 1, 2015, new SDSs must be in a uniform format.*

Section 311 of SARA Title III requires facilities that have SDSs for chemicals held above certain quantities to submit either copies of their SDSs or a list of these hazardous chemicals to the SERC, LEPC, and local fire department within three months after they exceed the threshold. If the facility owner or operator chooses to submit a list of hazardous chemicals, the list must include the chemical or common name of each substance and identify the applicable hazard categories. These hazard categories are:

- Immediate (acute) health hazard
- Delayed (chronic) health hazard
- Fire hazard
- Sudden release of pressure hazard
- Reactive hazard

Facilities covered by Section 311 must, under Section 312, submit annually an emergency and hazardous chemical inventory form to the LEPC, the SERC, and the local fire department. Facilities provide either a Tier I or Tier II form. Tier I forms include aggregate information for each applicable hazard category. The Tier II report contains basically the same information as the Tier I, but it must name the specific chemicals. **Most states, including Michigan, require Tier II information.** Tier II forms provide the following information for each substance:

- The chemical name or common name as indicated on the SDS.
- 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.
- An indication of whether the owner elects to withhold location information from disclosure to the public.

Because many states have added requirements or incorporated the Federal contents in their own forms, Tier I or Tier II forms should be obtained from the state SERC. Section 312 information must be submitted on or before March 1 each year.

In 1999, the U.S. EPA excluded gasoline held at most retail gas stations from Section 311/312 reporting. The U.S. EPA estimates that about 550,000 facilities, including approximately 6,000 facilities in Michigan, are now covered by SARA Title III Section 311/312 requirements.

The information submitted under Sections 311 and 312 is available to the public from LEPCs and SERCs. The hazardous chemical inventory reports are not available to the public on the Internet.

5.5 Online Reporting (Sections 302, 311, 312)

The online reporting program for sections 302, 311, and 312 is called Tier II Manager™ and can be accessed by going to www.michigan.gov/sara and selecting the “SARA Title III Hazardous Chemical Inventory” link. See Chapter 3 in the *“Michigan Facilities’ Guide to SARA Title III, Emergency Planning, and Release Reporting”* for instructions.

Reports required by sections 302, 311, and 312 must be submitted online to the Michigan SARA Title III Program. The fire departments and LEPCs in the counties of Genesee, Ingham, Kent, Oakland, Ottawa, Washtenaw and Wayne can receive your reports online. If your facility is not in one of these seven participating counties, then a paper copy of the report can be printed from the online program to submit to your fire department and LEPC. Reports can also be emailed from the program to LEPCs and fire departments that wish to receive them in this way.

The online reporting program was updated in 2014 and the reports required under sections 302 and 311 are now part of the Tier II report required under section 312. The Tier II report should be updated every time there are significant changes, such as adding or removing chemicals, so that a current inventory is always available to the LEPC and fire department.

5.6 Toxic Chemical Release Inventory (Section 313)

Section 313, commonly referred to as the Toxic Chemical Release Inventory or TRI, requires certain facilities to annually report toxic chemical releases and waste management activities to the U.S. EPA and the state by July 1. Facilities also must report information on source reduction, recycling, and treatment under the Pollution Prevention Act of 1990.

The TRI reporting requirement applies to facilities that have 10 or more full-time employees (or the equivalent), that manufacture (including import), process, or otherwise use a listed toxic chemical above threshold quantities, and that are in certain industry sectors. These sectors include manufacturing, metal mining, coal mining, electric utilities, hazardous waste treatment and disposal facilities, chemical distributors, petroleum bulk plants, solvent recovery services, and federal facilities.

A complete list of covered facilities is available online at www.epa.gov/tri.

One purpose of this reporting requirement is to inform the public and communities surrounding covered facilities about toxic chemicals at individual facilities, their uses, and releases into the environment. The data can also be used to:

- Identify sources of toxic chemical releases.
- Help analyze potential toxic chemical hazards to human health and the environment.
- Encourage pollution prevention at facilities.

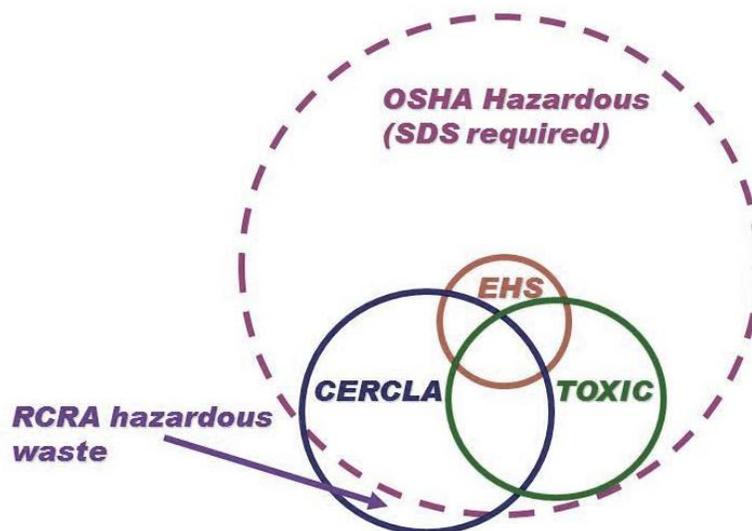
The following information is required on the form:

- The name, location and type of business.
- Whether the chemical is manufactured (including imported), processed or otherwise used and the general categories of use of the chemical.
- An estimate of the maximum amount of the toxic chemical present at the facility at any one time during the preceding year.
- Quantity of the chemical entering the air, land, and water during the preceding year.
- Off-site locations to which the facility transfers toxic chemicals in waste for recycling, energy recovery, treatment or disposal, and the amount transferred.
- Waste treatment methods and efficiency of methods for each waste stream.

The U.S. EPA maintains the TRI information in a national database that is available to the public on the Internet. Michigan maintains historic state-specific TRI data on the Internet.

Summary of Chemicals Covered by SARA Title III Requirements

On the diagram above, the large circle with the dashed line represents the universe of over 650,000 **OSHA hazardous chemicals**. These chemicals are potentially subject to Emergency and Hazardous Chemical Inventory reporting under Sections 311 and 312 (Tier II report) of SARA Title III. The line is dashed because there is **no list** of these chemicals.



The **Extremely Hazardous Substances (EHS)** (EHS on the diagram) are listed, so the circle has a solid line. Each of the 355 EHS' has an associated threshold planning quantity for emergency planning pursuant to SARA Title III Sections 302 and 303, and a reportable quantity for release reporting under SARA Title III Section 304. The EHSs are also subject to Emergency and Hazardous Chemical Inventory reporting unless an exemption applies (see Chapter 3, *What Chemicals Are Excluded*).

The **EHS'** are listed and have associated reportable quantities for release reporting under CERCLA Section 103 and SARA Title III Section 304. There are over 770 CERCLA hazardous substances that include hazardous waste that is subject to RCRA regulations. Part of the CERCLA group falls outside of the OSHA group. This is because OSHA does not require that an SDS be maintained for hazardous waste. Therefore RCRA hazardous waste is not reportable on the Tier II report, but a release that is above the listed reportable quantity must be reported.

The U.S. EPA published a list of approximately 650 **toxic chemicals** and chemical categories (Toxic on the diagram). Pursuant to SARA Title III Section 313, "subject facilities" must submit a TRI report for each toxic chemical that exceeds an activity threshold.

5.7 Other SARA Title III Requirements

5.7.1 Trade Secrets

SARA Title III Section 322 addresses trade secrets as they apply to SARA Title III Sections 303, 311, 312, and 313 reporting; a facility cannot claim trade secrets under Section 304 of this statute. Only the chemical identity may be claimed as a trade secret, though a generic class for the chemical must be provided. The criteria a facility must meet to claim a chemical identity as a trade secret is in 40 CFR Part 350. In practice, less than one percent of facilities have filed such claims.

SECTION ONE: Environmental Regulations

Even if chemical identity information can be legally withheld from the public, SARA Title III Section 323 allows the information to be disclosed to health professionals who need the information for diagnostic and treatment purposes or local health officials who need the information for prevention and treatment activities. In non-emergency cases, the health professional must sign a confidentiality agreement with the facility and provide a written statement of need. In medical emergencies, the health professional, if requested by the facility, provides these documents as soon as circumstances permit.

Any person may challenge trade secret claims by petitioning the U.S. EPA. The Agency must review the claim and rule on its validity.

5.7.2 Penalties

SARA Title III Section 325 allows criminal penalties as follows:

- Criminal penalties up to \$50,000 or five years in prison apply to any person who knowingly and willfully fails to provide emergency release notification.
- Penalties of not more than \$20,000 and/or up to one year in prison apply to any person who knowingly and willfully discloses any information entitled to protection as a trade secret.
- SARA Title III does not provide for criminal sanctions for violations of Section 313. However, 18 U.S.C. §1001 makes it a criminal offense to falsify information submitted to the U.S. Government.

SARA Title III Section 325 and the Debt Collection Improvement Act of 1996 and its implementing regulations at 40 CFR 19, allow civil and administrative penalties as follows:

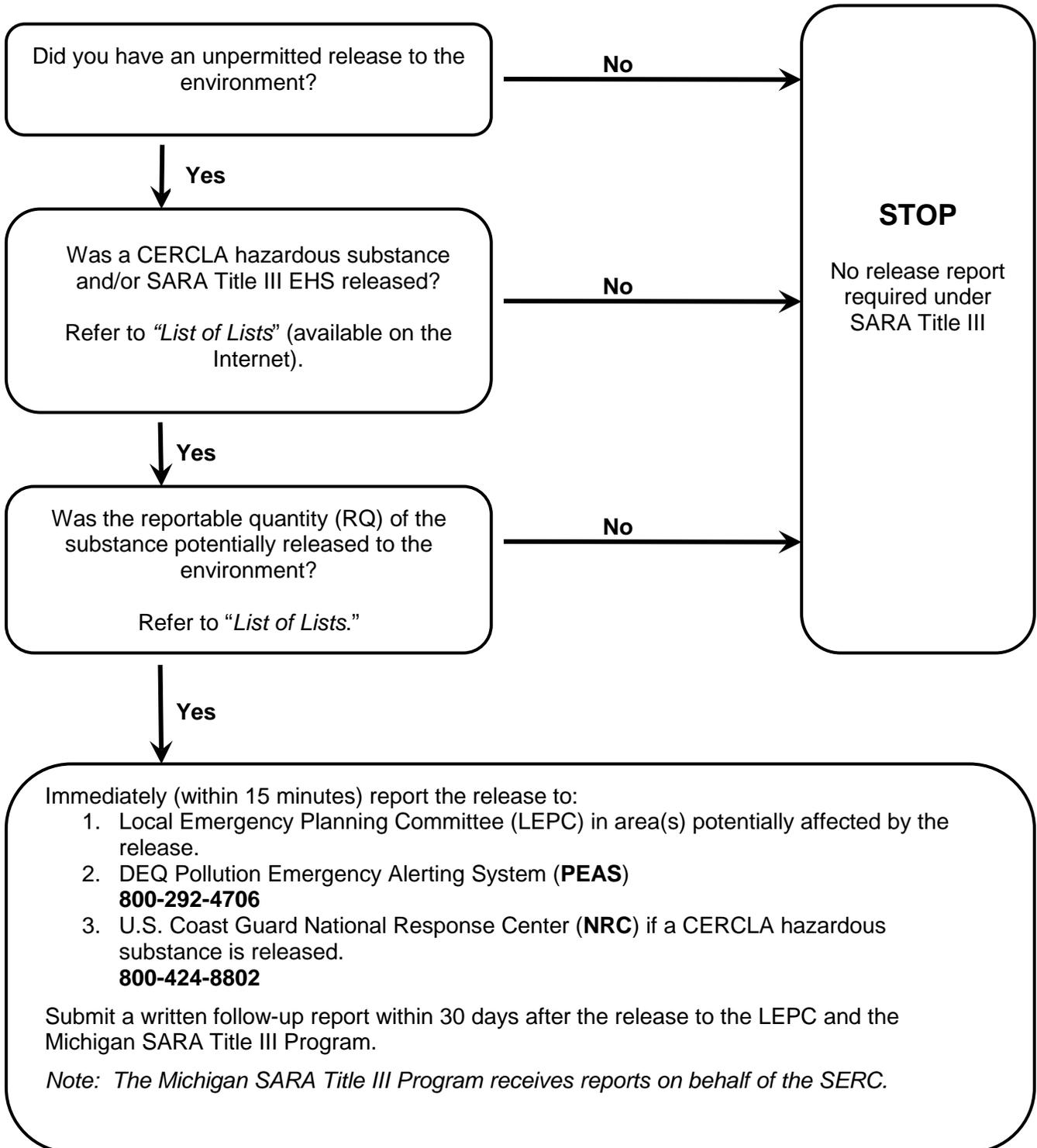
- Any person that fails to comply with emergency release notification requirements in CERCLA Section 103 or SARA Title III Section 304 shall be liable for civil penalties of up to \$37,500 per day per violation. The penalty for subsequent or repeat violations is \$107,500 per violation per day.
- Any person that violates hazardous chemical inventory reporting requirements in Section 311 of SARA Title III shall be liable for civil and administrative penalties of not more than \$16,000 per day per violation.
- Any person that violates hazardous chemical inventory reporting requirements in Section 312 of SARA Title III shall be liable for civil and administrative penalties of not more than \$37,500 per day per violation.
- Any person that violates toxic chemical release inventory reporting requirements in Section 313 of SARA Title III shall be liable for civil penalties not to exceed \$37,500 for each day that each chemical is not reported or incorrectly reported.

5.7.3 Citizens' Suits

SARA Title III Section 326 allows citizens to initiate civil actions against the U.S. EPA, SERCs, and the owner or operator of a facility for failure to meet the SARA Title III requirements. A SERC, LEPC, and state or local government may institute actions against facility owner/operators for failure to comply with SARA Title III requirements. In addition, states may sue the U.S. EPA for failure to provide trade secret information.

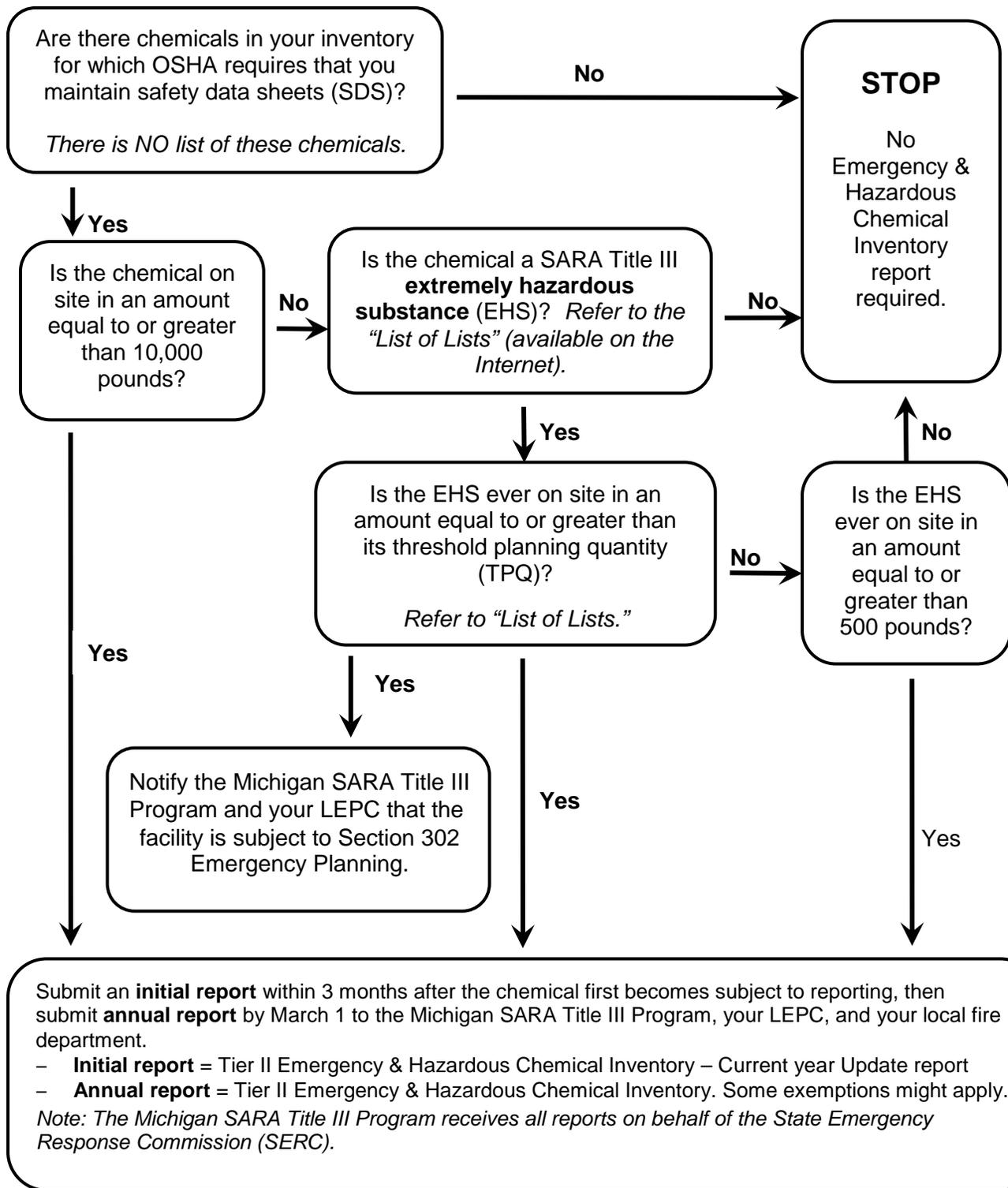
Release Reporting SARA Title III – Section 304

*Title III of the Superfund Amendments & Reauthorization Act ("SARA Title III") is the
Emergency Planning and Community Right-to-Know Act (EPCRA)*



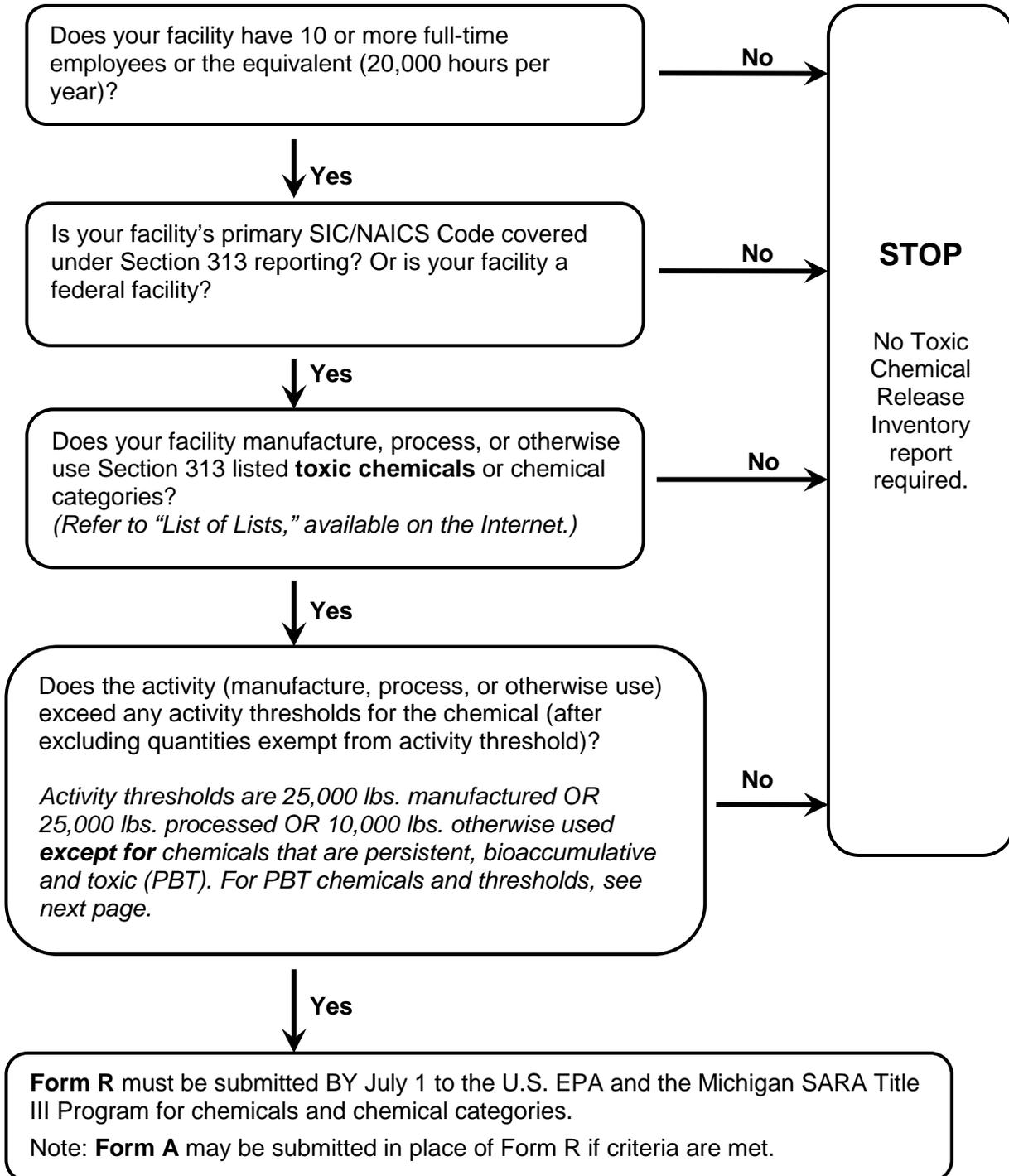
Emergency and Hazardous Chemical Inventory Reporting SARA Title III – Sections 311 and 312

*Title III of the Superfund Amendments & Reauthorization Act ("SARA Title III") is the
Emergency Planning and Community Right-to-Know Act (EPCRA)*



Toxic Chemical Release Inventory Reporting SARA Title III – Section 313

*Title III of the Superfund Amendments & Reauthorization Act ("SARA Title III") is the
Emergency Planning and Community Right-to-Know Act (EPCRA)*



SECTION ONE: Environmental Regulations

Table 5.2. TRI Covered Industries by Industry Classification

Industry	SIC Codes	NAICS
Manufacturing	20-39	311-339
Metal Mining	10 (except 1011, 1081, and 1094)	21222, 21223, 21229
Coal Mining	12 (except 1241)	21211
Electrical utilities	4911, 4931, and 4939 (limited to facilities that combust coal and/or oil for purpose of generating electricity for distribution in commerce)	22111, 22112
Treatment, storage and disposal facilities	4953 (limited to RCRA Subtitle C permitted or interim status facilities)	56221
Chemical distributors	5169	42469
Petroleum bulk terminals	5171	42471
Solvent recovery services	7389 (limited to facilities primarily engaged in services on a contract or fee basis)	32599
Federal facilities	Must report by Executive Order 13148.	

Note: Beginning with Report Year 2006, facilities report the six-digit North American Industry Classification System (NAICS) code that corresponds to the SIC code in the regulation.

Table 5.3. EPCRA Section 313 Listed PBT Chemicals and Activity Thresholds

Chemical	Threshold <i>(in pounds unless otherwise noted)</i>
ALDRIN	100
BENZO(G,H,I)PERYLENE ♦	10
CHLORDANE	10
DIOXIN AND DIOXIN-LIKE COMPOUNDS ♦	0.1 grams
HEPTACHLOR	10
HEXACHLOROBENZENE	10
ISODRIN	10
LEAD* (not contained in stainless steel, bronze, or brass alloy)	100
LEAD COMPOUNDS *	100
MERCURY	10
MERCURY COMPOUNDS	10
METHOXYCHLOR	100
OCTACHLOROSTYRENE ♦	10
PENDIMETHALIN	100
PENTACHLOROBENZENE ♦	10
POLYCHLORINATED BIPHENYLS	10
POLYCYCLIC AROMATIC COMPOUNDS +	100
TETRABROMOBISPHENOL A (TBBPA) ♦	100
TOXAPHENE	10
TRIFLURALIN	100

Note: PBT chemical reporting effective for 2000 report year, except lead and lead compounds, which were effective for 2001.

♦ Chemicals subject to EPCRA Section 313 reporting beginning in 2000.

+ 21 chemicals included in PAC category.

* Thresholds effective for 2001 reporting year.

WHERE TO GO FOR HELP

SUBJECT: SARA Title III Reporting

CONTACT: DEQ, Michigan SARA Title III Program
517-284-7272
deq-sara@michigan.gov
www.michigan.gov/sara
www.michigan.gov/chemrelease
www.michigan.gov/deqemergencyplan

PUBLICATION: Michigan Facilities' Guide to SARA Title III, Emergency Planning and Release Reporting

SUBJECT: LEPCs and Community Emergency Plans

CONTACT: Michigan State Police, Emergency Management & Homeland Security Division (EMHSD)
517-333-4416
eicholtj1@michigan.gov
www.michigan.gov/emhsd

PUBLICATION: LEPCs: Organizing for Success

SUBJECT: SARA Title III

CONTACT: U.S. EPA's Superfund, TRI, EPCRA, RMP, and Oil Information Center
800-424-9346
www.epa.gov/emergencies/content/epcra

SUBJECT: SARA Title III Toxic Chemical Release Inventory

CONTACT: U.S. Environmental Protection Agency, Toxics Release Inventory (TRI) Program
www.epa.gov/tri