

EPCRA Reporting Requirements for Fertilizer Retailers

This fact sheet was developed to help fertilizer retailers comply with their Emergency Planning and Community Right - to - Know Act (EPCRA)^{1,2} reporting requirements, by providing the U.S. Environmental Protection Agency's (EPA's) interpretation of the EPCRA section 311(e)(5)³ Retail Fertilizer Exemption and an overview of all the EPCRA reporting requirements.

EPCRA was created to help communities plan for chemical emergencies. It requires industry to report on the storage, use, and releases of certain chemicals to federal, state, tribal, territorial, and/or local governments. It then requires these reports be used to prepare for and protect communities from potential risks.

Fertilizer Retailers are required to report their chemicals stored on site unless their chemicals meet the retail fertilizer exemption as explained below. Under certain circumstances, fertilizers held for sale by retailers are exempt from EPCRA sections 311 and 312,⁴ *Hazardous Chemical Inventory Reporting*, requirements.⁵ The *Hazardous Chemical Inventory Reporting Requirements* are outlined on pages 5 - 6 of this fact sheet.

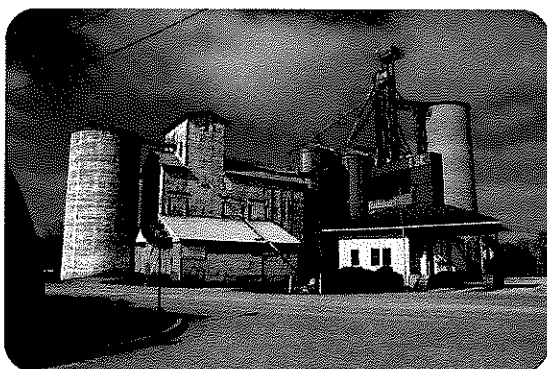


Photo 1: A grain elevator, a type of fertilizer retailer.

Grain elevators may mix fertilizer to meet retail customer specifications. Fertilizers intended to be mixed or blended are not eligible for the Retail Fertilizer Exemption.

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¹ 40 CFR 350 – 372; 42 U.S.C. Chapter 116

² Also known as Title III of the Superfund Amendments and Reauthorization Act (SARA Title III)

³ 40 CFR 370.66; 42 U.S.C. 11021(e)(5)

⁴ 40 CFR part 370; 42 U.S.C. 11021-22

⁵ 52 FR 38349, October 15, 1987

Retail Fertilizer Exemption Summary

Retail Fertilizer Exemption Summary

EPCRA section 311(e)(5) exempts retailers from reporting requirements under EPCRA sections 311 and 312 when fertilizers are held for sale to the ultimate customer (e.g., the farmer with the intent to apply the fertilizer). This exemption only applies to reporting requirements under EPCRA sections 311 and 312 and is only for fertilizers that are held for sale by retailers to the ultimate customers.

The Retail Fertilizer Exemption does not apply to:

- Fertilizers that are mixed or blended.
- Other chemicals that are used or stored on site, such as pesticides or other agricultural or non-agricultural chemicals.

Any fertilizer not covered by the exemption and all other chemicals (unless covered by other exemptions)⁶ must be reported per EPCRA sections 311 and 312 inventory reporting requirements. These reporting requirements are summarized on pages 5 – 6, and the exemption is clarified on pages 3 - 4 (Questions and Answers) of this document.

The Retail Fertilizer Exemption does not apply to the *Emergency Planning Notification* requirements of EPCRA section 302. Fertilizer retailers must report the presence of any chemicals, including fertilizers, that are Extremely Hazardous Substances (EHSs) when present at or above the applicable Threshold Planning Quantity (TPQ). These requirements are summarized on page 7 of this document.

The Retail Fertilizer Exemption also does not apply to the release reporting requirements of EPCRA sections 304 or 313, which are summarized on pages 7 - 8 of this document.



Photo 3 – Anhydrous Ammonia Tanks

Retail sales of anhydrous ammonia, to be used as fertilizer, are eligible for the Retail Fertilizer Exemption.

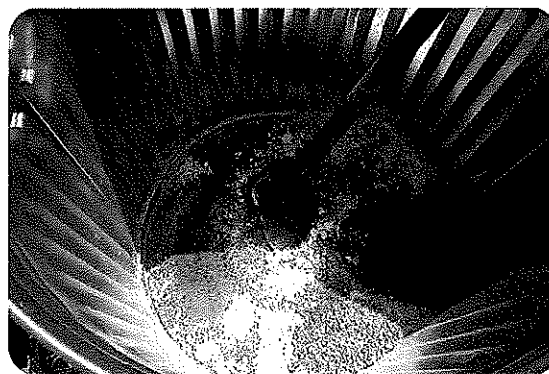


Photo 2- Mixing of Granular Fertilizer

Fertilizers that are mixed or blended are not eligible for the Retail Fertilizer Exemption.

⁶ 40 CFR 370.66 Hazardous chemical definition and 42 U.S.C. 1910.1200(b)(6)

Retail Fertilizer Exemption Questions and Answers

Are retailers that mix or blend fertilizers eligible for the Retail Fertilizer Exemption?

No. Retailers that mix or blend on site are not eligible for the Retail Fertilizer Exemption for the portions of the fertilizer that are intended to be mixed or blended. Fertilizers that are intended to be mixed or blended are chemicals that are held for the purpose of producing a different fertilizer, they are not being held for sale to the ultimate customer. Fertilizers held by retailers that are intended for mixing or blending should be reported if they are present on site at any one time above the applicable thresholds.

Retailers that mix or blend, may also sell fertilizers directly to the ultimate customer without mixing or blending. The portions of fertilizer that are not intended to be mixed or blended are exempt from the EPCRA definition of “*hazardous chemical*” and are exempt from the reporting requirements of EPCRA sections 311 and 312.

Are retailers that sell to other suppliers eligible for the Retail Fertilizer Exemption?

No. Retailers that sell to other suppliers are not eligible for the Retail Fertilizer Exemption for any portion of fertilizer that is sold to other suppliers. The Retail Fertilizer Exemption is specifically for fertilizers held for sale by a retailer to the ultimate customer. Other suppliers are not the ultimate customer. Retailers that sell to other suppliers are required to report fertilizers and all other *hazardous chemicals* if present on site at any one time above the applicable thresholds.

Retailers that sell to other suppliers, may also sell fertilizers directly to the ultimate customer. The portions of fertilizer that are sold to the ultimate customer are exempt from the definition of “*hazardous chemical*” and are exempt from the reporting requirements of EPCRA sections 311 and 312.

Are retailers required to report other agricultural chemicals under EPCRA Sections 311 and 312, Hazardous Chemical Inventory Reporting?

Yes. The Retail Fertilizer Exemption is only for fertilizers held for sale to the ultimate customer. The exemption is not applicable for other agricultural or non-agricultural chemicals, such as pesticides, solvents, diesel fuels, etc. Retailers are required to report nonfertilizer *hazardous chemicals* if present on site at any one time above the applicable thresholds.



Retail Fertilizer Exemption Questions and Answers

Are retailers required to report fertilizers that are sold for both agricultural and non-agricultural purposes?

Retailers that sell fertilizers for both agricultural and non-agricultural purposes (e.g., ammonia as a coolant) cannot use the Retail Fertilizer Exemption for the portions of the chemical that are intended to be sold for non-fertilizer purposes. The Retail Fertilizer Exemption is only for fertilizer held for sale by retailers to the ultimate customer. The portions of the fertilizer that are sold for non-fertilizer purposes are required to be reported if present on site at any one time above the applicable thresholds.

Can retailers report the fertilizers that are eligible for the Retail Fertilizer Exemption?

Yes. Retailers can report the total quantity of fertilizer they held, to include both the eligible (exempt) and the ineligible (non-exempt) portions. Retailers may find it easier to report the total quantity of the fertilizers that are present on site at any one time above the applicable thresholds. Although not required to report the fertilizer portions that are eligible for the exemption, it is acceptable and encouraged. This information benefits local emergency planners and responders, so they are aware of hazards that are present at your facility.

Does the Retail Fertilizer Exemption also apply to other EPCRA reporting requirements?

No. The EPCRA section 311(e)(5) Retail Fertilizer Exemption does not apply to EPCRA section 302,⁷ Emergency Planning Notification. This reporting exemption is attached to the EPCRA definition of a *hazardous chemical*. EPCRA section 302 is related to the EPCRA definition of EHSs. Therefore, retailers of EHSs (e.g., ammonia) are subject to EPCRA section 302 Emergency Planning Notification. These requirements can be found at 40 CFR part 355. The EHSs and their TPQs are listed in Appendices A and B of 40 CFR part 355. Local and Tribal Emergency Planning Committees (LEPCs and TEPCs) should include facilities that handle these chemicals in their local emergency response plan. Similarly, the exemption does not apply to the release reporting requirements of EPCRA sections 304 or 313.



⁷ 40 CFR 355.10 - 355.21; 42 U.S.C. §11002

EPCRA Reporting Requirements


Hazardous Chemical Inventory Reporting

EPCRA sections 311 and 312, *Hazardous Chemical Inventory Reporting*, apply to *hazardous chemicals* as defined by the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS),⁸ except those substances listed under EPCRA section 311(e).³ The EPCRA definition of a *hazardous chemical* exempts five categories of chemicals from being reported under EPCRA sections 311 and 312. One of these exemptions is for any substance that is a fertilizer held for sale by a retailer to the ultimate customer.

Inventory Reporting Requirements for non-Exempt Chemicals.

Under EPCRA sections 311 and 312, you must comply with the reporting requirements if the OSHA HCS requires your facility to prepare or have available a Safety Data Sheet (SDS), formerly known as a Material Safety Data Sheet (MSDS), for a *hazardous chemical* and if either of the following conditions are met:

- (1) A *hazardous chemical* that is an EHS is present at your facility at any one time in an amount equal to or greater than 500 pounds or the TPQ, whichever is lower.⁹
- (2) A *hazardous chemical* that is not an EHS is present at your facility at any one time in an amount equal to or greater than 10,000 pounds, unless it is gasoline or diesel held at a retail gas station in compliance with underground storage tank regulations. In these cases, gasoline must be reported when held in an amount equal to or greater than 75,000 gallons (all grades combined) and diesel must be reported when held in an amount equal to or greater 100,000 gallons (all grades combined).¹⁰

Section	Reporting Schedule
	<p style="text-align: center;">311</p> <p style="text-align: center;">One-time submission of SDS or list of hazardous chemicals. An update is required for new chemicals or new information about chemicals already submitted to the SERC or TERC,¹¹ LEPC or TEPC, and the fire department with jurisdiction over the facility.</p>
<p style="text-align: center;">312</p>	<p style="text-align: center;">Annually, by March 1st to SERC or TERC, LEPC or TEPC, and the fire department with jurisdiction over the facility.</p>

⁸ 29 CFR 1910.1200

⁹ EHSs and their TPQs are listed in Appendices A and B of 40 CFR part 355.

¹⁰ The implementing regulations and reporting thresholds are codified at 40 CFR part 370.

¹¹ State or Tribal Emergency Response Commission (SERC or TERC)

EPCRA Reporting Requirements

Section 311 Submission of SDSs or List of Hazardous Chemicals

Under section 311, retailers must submit the SDSs for non-exempt *hazardous chemicals* present on site at or above the reporting thresholds to their State or Tribal Emergency Response Commission (SERC or TERC), LEPC or TEPC, and local fire department. Facilities may choose to submit a list of *hazardous chemicals*, grouped into hazard categories, in lieu of the SDSs. This is a one-time submittal. New facilities have three months after becoming subject to the OSHA regulations to submit their SDSs or their list of *hazardous chemicals*. If there are any significant changes to the information submitted, the facilities must submit updated information within three months.

Section 312 Submission of Inventory Reports

Under section 312, facilities that are required to submit SDSs or lists of *hazardous chemicals* under section 311, are also required to submit an annual inventory report of *hazardous chemicals* on site at any one time in an amount equal to or greater than the reporting thresholds. This inventory report must be submitted to the SERC or TERC, LEPC or TEPC, and local fire department by March 1st of each year.

Reporting Methods for Sections 311 and 312

Reach out to your state, tribe, or territory to determine the required reporting method. The EPA maintains a website with contact information:

<https://www.epa.gov/epcra/state-tier-ii-reporting-requirements-and-procedures>.

For more information on these reporting requirements, please visit:

www.epa.gov/epcra/epcra-sections-311-312



EPCRA Reporting Requirements

Emergency Planning Notification for Extremely Hazardous Substances (EHSs)

Under EPCRA section 302, *Emergency Planning Notification*, retailers are required to notify the SERC or TERC and the LEPC or TEPC if they have any EHS present at or above its TPQ, within 60 days of the EHS being present on site. These requirements can be found at 40 CFR part 355.¹² The EHSs and their TPQs are listed in Appendices A and B¹³ of 40 CFR part 355. If the LEPC or TEPC requests any additional information for developing or modifying the local emergency plans, the retailer must promptly provide the information. Notification methods are determined by the EPCRA implementing agencies for the state, tribe, or territory.¹⁴

The Retail Fertilizer Exemption is not applicable to EPCRA section 302.

For more information on these reporting requirements, please visit:

www.epa.gov/epcra



Emergency Release Notification

Under EPCRA section 304 and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103, *Emergency Release Notifications*, retailers are required to provide notifications for accidental releases of CERCLA hazardous substances and EPCRA EHSs when released at or above specified reportable quantities. These requirements can be found at 40 CFR 355.30.¹⁵ The list of CERCLA hazardous substances and their reportable quantities (RQs) are listed in 40 CFR part 302.4.

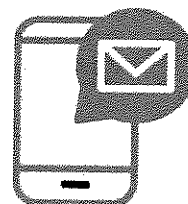
For releases of EPCRA EHSs, the initial reporting methods are determined by the EPCRA implementing agencies for the state, tribe, or territory.¹⁵ Retailers are also required to submit a written follow-up report to the SERC or TERC and the LEPC or TEPC.

For releases of CERCLA hazardous substances, retailers should notify the National Response Center¹⁶ by phone at 800-424-8802.

The Retail Fertilizer Exemption is not applicable to EPCRA section 304.

For more information on these reporting requirements, please visit:

<https://www.epa.gov/epcra/epcra-section-304>



¹² 40 CFR part 355; 42 U.S.C. 11002

¹³ EHSs and their TPQs are listed in Appendices A and B of 40 CFR part 355.

¹⁴ <https://www.epa.gov/epcra/state-emergency-response-commissions-contacts>

¹⁵ <https://www.epa.gov/epcra/state-contact-information-epcra-section-304-emergency-release-notification>

¹⁶ <https://www.epa.gov/emergency-response/national-response-center>

EPCRA Reporting Requirements

Toxic Chemical Release Reporting

Under section 313, *Toxic Chemical Inventory Release Reporting*, facilities with 10 or more employees, in covered industry sectors (which includes manufacturers of nitrogenous or phosphate fertilizers, including those that mix and blend), and meet established chemical activity thresholds are required to submit Toxics Release Inventory (TRI) data to the Environmental Protection Agency by July 1st of each year. To determine if you are required to report under section 313, the EPA has developed a TRI Threshold Screening Tool.¹⁷

The Retail Fertilizer Exemption is not applicable to EPCRA section 313.

For more information on these reporting requirements, please visit:

www.epa.gov/tri



How do I learn more about EPCRA Reporting Requirements?

- Regulations, fact sheets, guidance documents, training, and answers to frequently asked questions related to EPCRA sections 301 to 312:
www.epa.gov/epcra
- Reach out to your state, tribe, or territory:
<https://www.epa.gov/epcra/state-emergency-response-commissions-contacts>
- Training for SERCs or TERCs, LEPCs or TEPCs, and responders (non-section 313):
www.epa.gov/epcra/epcra-training-states-tribes-lepcs-local-planners-and-responders-non-section-313
- Toxics Release Inventory (TRI) Program – EPCRA section 313: www.epa.gov/tri

¹⁷ TRI Threshold Screening Tool website:

<https://www.epa.gov/toxics-release-inventory-tri-program/tri-threshold-screening-tool>